

EXHIBIT I

(Seattle Times Co. v. Sarko)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

SUPERIOR COURT OF THE STATE OF WASHINGTON
PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

EDDIE LEE DAVIS,
DOUGLAS EDWARD DAVIS,
RICKEY HINTON,
QUIANA M. WILLIAMS,
LATRECIA NELSON,
LATANYA K. CLEMMONS,
DARCUS ALLEN.

Defendants

) No. 09-1-05374-1
) No. 09-1-05375-0
) No. 09-1-05340-6
) No. 09-1-05452-7
) No. 09-1-05453-5
) No. 09-1-05523-0
) No. 10-1-00938-0

) THE SEATTLE TIMES' OPPOSITION
) TO MEMORANDUM RE:
) OBJECTION TO PCSO DOCUMENTS
) IDENTIFIED FOR RELEASE

The arguments raised by Defendant Darcus Allen to justify withholding the documents are insufficient. He has failed to meet his burden under the Public Records Act, and he has failed to show that releasing the documents will prejudice his fair trial rights or jeopardize the Court's ability to seat an impartial jury.

A. The PRA Mandates Disclosure of the Records.

Allen bears the burden of proving that a specific exemption applies. *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn.2d 243, 251, 257-58, 884 P.2d 592 (1994). Simply citing an exemption is not enough – Allen must establish that release would “clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.” RCW 42.56.540 *See Soter*

THE TIMES'S OPPOSITION TO ALLEN'S MEMORANDUM RE:
PCSO DOCUMENTS IDENTIFIED FOR RELEASE - 1

DWT 14717697v1 0040702-000170

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700.

17
18
19
20
21
22
23
24
25
26
27

1 v. *Cowles Publ'g Co.*, 162 Wn.2d 716, 756-57, 174 P.3d 60 (2007). Allen has yet to address this
2 statutory requirement, and so any arguments to withhold documents based on the PRA fail as a
3 matter of law.¹

4 **1. Allen lacks standing to object to the privacy rights of a third party.**

5 RCW 42.56.540 has a specific standing requirement: In the case of individuals, a motion
6 to prevent disclosure may be brought only by “a person who *is named in the record* or to whom
7 the record *specifically pertains*.” (emphasis added). This provision furthers the PRA’s policy of
8 open access to government records by limiting the universe of third parties who can seek this
9 extraordinary relief. Thus, if Allen is not named in the record and the record does not
10 specifically pertain to him, he cannot object that release would violate that third party’s privacy
11 rights.

12 **2. The ongoing investigation exemption is inapplicable.**

13 Allen argues that the investigation is ongoing and that justifies withholding many of the
14 documents. This exemption is also the basis for withholding “tip” records. See Allen Mem. at
15 11. However, under this exemption, the issue is not whether the investigation is open or closed
16 but whether nondisclosure “is essential to effective law enforcement or for the protection of any
17 person's right to privacy.” RCW 42.56.240(1). Significantly, neither the Pierce County
18 Prosecutor’s Office, the Pierce County Sheriff’s Office (“PCSO”) nor any other agency
19 investigating these matters has asserted that disclosure of the incident reports at issue would
20 impede law enforcement. Furthermore, Washington’s Supreme Court has ruled that in cases
21 such as this, where a defendant has been identified and charged, investigative records are
22 presumptively not “essential to effective law enforcement,” and, absent a specific showing to the
23 contrary, must be disclosed. *Cowles Pub. Co. v. Spokane Police Dept.*, 139 Wn.2d 472, 481, 987
24 P.2d 620 (1999).

25
26
27 ¹ This is true for all of the defendants who have opposed the release of records.

1 Allen's attempt to distinguish *Cowles* are unpersuasive. *Cowles* clearly states that the
2 presumption that police records are disclosable does not depend on the severity of the crime, or
3 the alleged state of the investigation: "In sum, we hold *in cases where the suspect has been*
4 *arrested* and the matter referred to the prosecutor, *any potential danger to effective law*
5 *enforcement is not such as to warrant categorical nondisclosure of all records in the police*
6 *investigative file.*" *Cowles*, 139 Wn.2d at 479-80 (emphasis added). Only those portions of the
7 records that are in fact essential to effective law enforcement may be redacted; the rest must be
8 released.

9 **3. The work product exemption is inapplicable.**

10 Allen argues that the records are exempt as the *state's* attorney work product. See Allen
11 Mem. at 10-11. Significantly, the Pierce County Prosecutor's Office has not opposed release or
12 claimed that the documents are that office's work product. *Cowles* establishes that under
13 Washington law, police investigative reports are not the attorney work product of the prosecutor.
14 *Id.* at 478. Allen argues that Ms. Glass for the prosecutor's office has denied these same requests
15 for investigative reports on the basis of work product. Allen has not produced this alleged
16 request and denial. Because The Times' record requests (seeking sheriff's incident reports and
17 the Alcohol Tobacco and Firearms records) was not directed to the prosecutor or any other
18 attorney for the state, the documents cannot conceivably be attorney work product.

19 **B. Allen's general assertions fail to show that releasing the documents will**
20 **endanger his fair trial rights.**

21 The Supreme Court has held that releasing public records about a pending criminal
22 matter rarely results in the inability to impanel a fair and impartial jury: "Nor does a defendant's
23 constitutional right to a fair trial compel categorical nondisclosure of police investigative
24 records. Facts regarding pending criminal prosecutions are often made public prior to trial,"
25 *Cowles*, 139 Wn.2d at 479, even where a defendant stands accused of violent well-publicized
26 crimes in a small community, *State v. Bassett*, 128 Wn.2d 612, 616-17, 911 P.2d 385 (1996);
27 *Seattle Times Co. v. U.S. District Court*, 845 F.2d 1513, 1517-18 (9th Cir. 1988) ("Pretrial

1 publicity does not...lead in every criminal case to an unfair trial,” and “prejudicial publicity is
2 less likely to endanger the defendant’s right to a fair trial in a large metropolitan area such as
3 Seattle”).

4 Allen’s generalized fear of publicity does not justify limiting public access. Rather,
5 “[t]he relevant question is ... whether the jurors at the trial had such fixed opinions that they
6 could not judge impartially the guilt of the defendant. ... The best way to find out if the jurors
7 have opinions so fixed that they cannot be impartial is to attempt to empanel a jury.” *State v.*
8 *Whitaker*, 133 Wash. App. 199, 212, 135 P.3d 923 (2006). Alternatives such as careful voir dire
9 and jury instructions regarding news reporting and the presumption of innocence must, as a
10 matter of law, be considered before any restriction on public access is entertained. *See Bassett*,
11 128 Wn.2d at 617; *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 41, 640 P.2d 716 (1982).

12 Allen still has not cited a single newspaper article as evidence of prejudicial pretrial
13 publicity that justifies restrictions on the public’s right of access to the sheriff’s reports and other
14 public records at issue. Nor has he addressed the alternatives to restricting access and why the
15 Court would be unable to seat an impartial panel from the Pierce County jury pool despite proper
16 voir dire and the other alternatives.

17 **C. The Rules of Professional Conduct are inapplicable.**

18 Allen still has cited no authority for his contention that the *Sherriff’s Office* violates the
19 Rules of Professional Conduct (the “RPCs”) by releasing the documents or that a release
20 amounts to an “extrajudicial statement” in violation of the RPCs. There simply is no such
21 authority. The RPCs, standing alone, are not a basis for withholding the documents.

22 **D. The Bench Bar Press Guidelines are inapplicable.**

23 The Bar-Press Principles (“BBPs”) are not mandatory. *See* “A Note on Bench-Bar Press
24 Principles,” *Public Records Act Deskbook* § 20.5 (WSBA 2006) (stating that “the Bench-Bar-
25 Press Guidelines were cooperatively rewritten as Principles and Considerations, with express
26 agreement that courts were not to use them as mandatory directives”). The guidelines

1 themselves state that they merely "provide practical guidance on the relationships between
2 judges, lawyers and the press, and are intended to promote a better working relationship between
3 the bench, bar and news media." Washington Courts Bench Bar Press Committee,
4 http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=77. As with the
5 RPCs, Allen has cited no authority for his contention that the PCSO violates the BBPs by
6 releasing the documents.

7 The Times further responds to Allen's specific objections as follows:

8 9 **OBJECTIONS**

10 **1. ATF Reports**

11 Defendant objects to release of this report because it contains the address or other
12 personal information of a suspect or potential witness and release would invade that person's
13 privacy. It also contains information regarding the collection of evidence to be tested.

14 **Response:** Allen lacks standing to object on the grounds that release would invade the
15 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
16 reasons stated above.

17 18 **2. Witness/Suspect Statements (Including Tacoma Police Department Officer 19 Notes**

20 Defendant objects to the release of any statements, notes regarding statements, and
21 transcripts of statements. RPC 3.6 Guidelines I (5) & (6); Bench Press Bar Guidelines 2(a), (b)
22 and (d) and as part of the ongoing investigation. RCW 42.56,240. Additionally, counsel's
23 review reveals that during law enforcement questioning the interviewee was frequently
24 challenged as being untruthful and asked to comment on the credibility and actions of others.
25 These interviews contain unsubstantiated speculation and inadmissible hearsay evidence. As
26 well, the reporting officers have placed stars next to particular names signaling their personal
27 beliefs as to guilt of the interviewees designated by the stars.

THE TIMES'S OPPOSITION TO ALLEN'S MEMORANDUM RE:
PCSO DOCUMENTS IDENTIFIED FOR RELEASE - 5

DWT 14717697v1 0040702-000170

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 • 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 • Fax: (206) 757-7700

1 Captain Meinema notes contain opinions and comments on individuals. Detective
2 Griffith's notes contain notations as to interviews with those subsequently accused, an individual
3 who also admitted assisting Maurice Clemmons but was not subsequently charged, third party
4 beliefs and hearsay statements concerning Mr. Allen, information on other possible charges and
5 the desire to push for charging particular individuals with serious crimes.

6 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
7 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
8 inapplicable for the reasons stated above. The existence of speculation, opinions or hearsay is
9 not a basis for withholding documents under the PRA or fair trial rights.

10
11 **3. King County Housing Authority & Financial/Protected Housing Documents**

12 Personal financial and state and public housing documents are protected from disclosure.
13 Additionally, the documents identify individuals not charged with any crime and would
14 impermissibly violate the individual's rights to privacy.

15 **Response:** Allen lacks standing to object on the grounds that release would invade the
16 privacy rights of another person.

17
18 **4. King County Sheriff**

19 **Event log** – The objects to the release of these documents under the on going
20 investigation exemption.

21 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
22 above.

23
24 **Vehicle Impound.** The defendant objects to release of this report because it contains the
25 address and other personal information of a suspect or potential witness and release would
26

1 invade that person's privacy. Additionally, the document identify an individual not charged with
2 any crime and would impermissibly violate the individual's rights to privacy.

3 **Response:** Allen lacks standing to object on the grounds that release would invade the
4 privacy rights of another person.

5
6 **Officer Reports.** In addition to the objections outlined in the Authority section above,
7 the defendant objects to release of these reports because they contain the address and other
8 personal information of suspect or potential witnesses and release would invade that person's
9 privacy. Also the reports contain information on numerous surveillance locations for individuals
10 who are not charged or associated with the criminal investigation. The reports also contain
11 protected tip information, personal records, including financial documents, car registration
12 records, hearsay and inadmissible evidence including officer opinions regarding the credibility of
13 various individuals identified in the reports, including defendants. The reports also contain
14 statements associated with those charged with crimes. These reports are also exempt because
15 they concerns the collection of items to be tested, testing or results of forensic testing. RCW
16 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

17 **Response:** Allen lacks standing to object on the grounds that release would invade the
18 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
19 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
20 guidelines are inapplicable for the reasons stated above.

21 22 **5. Related Pierce County Sheriff Department Cases**

23 Reports on incidents involving minors and allegations of sexual misconduct are protected
24 from disclosure. Redaction would not alleviate the invasion of privacy of the individuals named
25 in the reports. Likewise medical records and evaluations associated with the investigation of
26 sexual misconduct are protected privacy records. As stated previously, the Public Records Act
27

1 itself recognizes exemptions not only under RCW 42.56, *et seq.* but also under any "other statute
2 which exempts or prohibits disclosure of specific information or records." RCW 42.56.070. In
3 1991, the Legislature enacted the Uniform Health Care Information Act, Chapter 70.02 RCW. In
4 doing so it made specific findings, including (1) **Health care information is personal and**
5 **sensitive information that if improperly used or released may do significant harm to a**
6 **patient's interests in privacy, health care, or other interests.** Taking into account the same
7 privacy considerations, the Federal Health Insurance Portability And Accountability Act
8 (HIPPA) Standards, 45 C.F.R. § 164.512, also requires notice to the patient and an opportunity
9 to object.

10 The related case documents also contain protected "tip" information. *See* 09-3550721.1.

11 Defendant Allen does not object to the release of information relating to Martin Santo
12 Lewis. *See* 09-333-743.1 and .2. Mr. Lewis' case has already gone to trial and been extensively
13 reported upon. What is of note, is that in the media coverage of this individual's trial statements,
14 the press invariably loops the story back to Maurice Clemmons and the individual's now facing
15 charges even though they have no connection to Mr. Lewis.

16 **Response:** Allen lacks standing to object on the grounds that releasing the documents
17 would invade the privacy rights of another person. Furthermore, HIPAA and Washington's
18 health care privacy statute apply to health care providers, *see* 45 C.F.R. 164.501, or RCW
19 70.02.020. Because the PCSO is not a health care provider, the statute is inapplicable. In any
20 event, a covered entity may release "de-identifiable information," meaning, records with
21 personal identifiable information redacted, such as name, date and social security number.

22 The ongoing investigation exemption is inapplicable for the reasons stated above.

23 Documents relating to Martin Santo Lewis should be released immediately.

1 **6. Washington State Fusion Center Intelligence Reports**

2 Defendant objects to the release of tip and intelligence reports. RCW 42.56.240.

3 Moreover, the reports concerning alleged observations of Latanya Clemmons encourage
4 improper and unfounded speculation with a high likely hood to unfairly influence a potential jury
5 pool.

6 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
7 above. Allen fails to explain how the observations of Ms. Clemmons will so influence the jury
8 pool that the Court will be unable to seat an impartial jury, and as a result, his objection is a mere
9 generalized fear of publicity.

10
11 **7. Seattle Police Department Reports**

12 Defendant Allen objects to the release of these reports and officer notes under the
13 ongoing investigation exception and the significant adverse effect on his right to obtain a fair
14 trial by an impartial jury. Moreover, the reports regarding the shooting of Maurice Clemmons
15 contain information that includes forensic evidence collection, medical and autopsy information.
16 The shooting has been covered by the media during the hearing involving the Seattle police
17 officer responsible for killing Maurice Clemmons and the Officer's awards for his actions.

18 Reports involving a "cooperating" witness are protected tip information and the reports
19 are exempt under the ongoing investigation exemption. They also contain impermissible opinion
20 and credibility assessments.

21 In addition to being exempt under the ongoing investigation provisions, reports regarding
22 the service of search warrants and SWAT team activity associated with a residence at which no
23 evidence was found and none of the occupants have been charged should not be released due to
24 privacy concerns.

25 The Seattle Police Department CSI reports are exempt forensic/testing reports. RCW
26 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

1 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
2 above. Allen lacks standing to object on the grounds that release would invade the privacy rights
3 of another person. The RPCs are inapplicable for the reasons stated above. The BBP guidelines
4 are inapplicable for the reasons stated above. Inadmissible opinion testimony is not a basis for
5 withholding documents under the PRA or fair trial rights. Allen's arguments are nothing more
6 than a generalized fear of publicity, and as such, are insufficient to justify withholding on the
7 basis of fair trial rights.

8
9 **8. Major Incident Log**

10 Defendant Allen objects to the release of the major incident log as being exempt under
11 the ongoing investigation exception.

12 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
13 above. The RPCs are inapplicable for the reasons stated above.

14
15 **9. Tacoma Police Department Files**

16 See Objection No. 2 – for objection to officer notes of interviews and Objection No. 10
17 below for objections concerning forensic investigations.

18 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
19 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
20 inapplicable for the reasons stated above.

21
22 **10. Tacoma Police Department Forensics Reports**

23 Defendant objects to the release of documents concerning the testing or results of
24 forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines 1 (3); Bench Press
25 Bar Guidelines 2(c).

1 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
2 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
3 inapplicable for the reasons stated above.
4

5 **11. Pierce County Sheriff Department Incident Reports**

6 Defendant Allen objects to the release of any law enforcement investigative report
7 because the investigation is ongoing, the reports contain inadmissible evidence and contain
8 addresses, and personal data of individuals. Additional objections are identified by the number
9 of the supplemental report i.e., ".1" etc.

10 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
11 above. Allen lacks standing to object on the grounds that release would invade the privacy rights
12 of another person.
13

14 **Incident No. 093330363.1** The defendant objects to release of this report because it
15 contains the address and other personal information of a suspect or potential witness and release
16 would invade that person's privacy. It also contains hearsay and other inadmissible evidence.
17 *Cowles, supra.*

18 **Response:** Allen lacks standing to object on the grounds that release would invade the
19 privacy rights of another person. The existence of hearsay and inadmissible evidence is not a
20 basis for withholding documents under the PRA or fair trial rights.
21

22 **Incident No. 093330363.2** The defendant objects to release of this report because it
23 contains the address and other personal information of a suspect or potential witness and release
24 would invade that person's privacy. It also contains hearsay and other inadmissible evidence.
25
26
27

1 **Response:** Allen lacks standing to object on the grounds that release would invade the
2 privacy rights of another person. The existence of hearsay and inadmissible evidence is not a
3 basis for withholding documents under the PRA or fair trial rights.
4

5 **Incident No. 093330363.3** The defendant objects to release of this report because it
6 contains the address or other personal information of a suspect or potential witness and release
7 would invade that person's privacy. It also contains hearsay and other inadmissible evidence.
8

9 **Response:** Allen lacks standing to object on the grounds that release would invade the
10 privacy rights of another person. The existence of hearsay and inadmissible evidence is not a
11 basis for withholding documents under the PRA or fair trial rights.
12

13 **Incident No. 093330363.4** The defendant objects to release of this report because it
14 contains the address and other personal information of a suspect or potential witness and release
15 would invade that person's privacy. It also contains hearsay and other inadmissible evidence.
16

17 **Response:** Allen lacks standing to object on the grounds that release would invade the
18 privacy rights of another person. The existence of hearsay and inadmissible evidence is not a
19 basis for withholding documents under the PRA or fair trial rights.
20

21 **Incident No. 093330363.5** This report is exempt because it concerns the collection of
22 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
23 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
24 testimony.
25

26 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
27 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
inapplicable for the reasons stated above. Opinion testimony is not a basis for withholding
documents under the PRA or fair trial rights.

1
2 **Incident No. 093330363.6** This report is exempt because it concerns the collection of
3 items to be tested, testing or results of forensic testing, RCW 42.56.240 (investigative results)
4 RPC 3.6 Guidelines (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
5 testimony.

6 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
7 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
8 inapplicable for the reasons stated above. Opinion testimony is not a basis for withholding
9 documents under the PRA or fair trial rights.

10
11 **Incident No. 093330363.7** This report is exempt because it concerns the collection of
12 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
13 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
14 testimony.

15 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
16 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
17 inapplicable for the reasons stated above. Opinion testimony is not a basis for withholding
18 documents under the PRA or fair trial rights.

19
20 **Incident No. 093330363.8** The defendant objects to release of this report because it
21 contains the address or other personal information of a suspect or potential witness and release
22 would invade that person's privacy. It also contains hearsay and other inadmissible evidence.

23 **Response:** Allen lacks standing to object on the grounds that release would invade the
24 privacy rights of another person. The existence of hearsay and inadmissible evidence is not a
25 basis for withholding documents under the PRA or fair trial rights.

1 **Incident No. 093330363.9** Defendant does not object to the release of this report as it
2 solely relates to the false claim of responsibility by another that has already been adjudicated.

3 **Response:** This document should be released immediately.
4

5 **Incident No. 093330363.10** This report is exempt because it concerns the collection of
6 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
7 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
8 testimony.

9 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
10 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
11 inapplicable for the reasons stated above. Opinion testimony is not a basis for withholding
12 documents under the PRA or fair trial rights.
13

14 **Incident No. 093330363.11** This report is exempt because it concerns the collection of
15 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
16 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
17 testimony.

18 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
19 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
20 inapplicable for the reasons stated above. Opinion testimony is not a basis for withholding
21 documents under the PRA or fair trial rights.
22

23 **Incident No. 093330363.12** The defendant objects to release of this report because it
24 contains the address or other personal information of a suspect or potential witness and release
25 would invade that person's privacy. It also possible "tip" evidence, hearsay and other
26 inadmissible evidence.
27

1 **Response:** Allen lacks standing to object on the grounds that release would invade the
2 privacy rights of another person. The existence of hearsay and inadmissible evidence is not a
3 basis for withholding documents under the PRA or fair trial rights. The ongoing investigation
4 exemption is inapplicable for the reasons stated above. The existence of hearsay and other
5 evidence are not a basis for withholding documents under the PRA or fair trial rights.

6
7 **Incident No. 093330363.13** This report is exempt because it concerns the collection of
8 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
9 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
10 testimony.

11 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
12 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
13 inapplicable for the reasons stated above. The existence of opinion testimony is not a basis for
14 withholding documents under the PRA or fair trial rights.

15
16 **Incident No. 093330363.14** The defendant objects to release of this report because it
17 contains the address or other personal information of a suspect or potential witness and release
18 would invade that person's privacy. It also reflects possible "tip" evidence, hearsay and other
19 inadmissible evidence.

20 **Response:** Allen lacks standing to object on the grounds that release would invade the
21 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
22 reasons stated above. The existence of hearsay and inadmissible evidence is not a basis for
23 withholding documents under the PRA or fair trial rights.

24
25 **Incident No. 093330363.15** This report is exempt because it concerns the collection of
26 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)

1 RPC 3.6 Guidelines 1 (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible
2 opinion testimony.

3 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
4 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
5 inapplicable for the reasons stated above. Inadmissible opinion testimony is not a basis for
6 withholding documents under the PRA or fair trial rights.

7
8 **Incident No. 093330363.16** The defendant objects to release of this report because it
9 contains the address or other personal information of a suspect or potential witness and release
10 would invade that person's privacy. It also contains information regarding the collection of
11 evidence to be tested.

12 **Response:** Allen lacks standing to object on the grounds that release would invade the
13 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
14 reasons stated above.

15
16 **Incident No. 093330363.17** This report is exempt because it concerns the collection of
17 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
18 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
19 testimony.

20 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
21 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
22 inapplicable for the reasons stated above. Inadmissible opinion testimony is not a basis for
23 withholding documents under the PRA or fair trial rights.

24
25 **Incident No. 093330363.18** This report is exempt because it concerns the collection of
26 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)

1 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c), It also contains inadmissible opinion
2 testimony.

3 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
4 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
5 inapplicable for the reasons stated above. Opinion testimony is not a basis for withholding
6 documents under the PRA or fair trial rights.

7
8 **Incident No. 093330363.19** The defendant objects to release of this report because it
9 contains the address or other personal information of a suspect or potential witness and release
10 would invade that person's privacy. It also contains information regarding the collection of
11 evidence to be tested.

12 **Response:** Allen lacks standing to object on the grounds that release would invade the
13 privacy rights of another person. To the extent he objects on the basis of the ongoing
14 investigation exemption, this exemption is inapplicable for the reasons stated above.

15
16 **Incident No, 093330363.20** Defendant does not object to the release of this document.

17 **Response:** This document should be released immediately.

18
19 **Incident No. 093330363.21** The defendant objects to release of this report because it
20 contains the address or other personal information of a suspect or potential witness and release
21 would invade that person's privacy.

22 **Response:** Allen lacks standing to object on the grounds that release would invade the
23 privacy rights of another person.

24
25 **Incident No. 093330363.22** The defendant objects to release of this report because it
26 contains the address or other personal information of a suspect or potential witness and release

1 would invade that person's privacy. It also contains information regarding the collection of
2 evidence to be tested.

3 **Response:** Allen lacks standing to object on the grounds that release would invade the
4 privacy rights of another person. To the extent he objects on the basis of the ongoing
5 investigation exemption, this exemption is inapplicable for the reasons stated above.

6
7 **Incident No. 093330363.23** The defendant objects to release of this report because it
8 contains the address or other personal information of a suspect or potential witness and release
9 would invade that person's privacy. It also contains information regarding the collection of
10 evidence to be tested.

11 **Response:** Allen lacks standing to object on the grounds that release would invade the
12 privacy rights of another person. To the extent he objects on the basis of the ongoing
13 investigation exemption, this exemption is inapplicable for the reasons stated above.

14
15 **Incident No. 093330363.24** The defendant objects to release of this report because it
16 contains the address or other personal information of a suspect or potential witness and release
17 would invade that person's privacy. It also contains information regarding the collection of
18 evidence to be tested.

19 **Response:** Allen lacks standing to object on the grounds that release would invade the
20 privacy rights of another person. To the extent he objects on the basis of the ongoing
21 investigation exemption, this exemption is inapplicable for the reasons stated above.

22
23 **Incident No. 093330363.25** The defendant objects to release of this report because it
24 contains the address or other personal information of a suspect or potential witness and release
25 would invade that person's privacy. It also contains information regarding the collection of
26 evidence to be tested.

1 **Response:** Allen lacks standing to object on the grounds that release would invade the
2 privacy rights of another person. To the extent he objects on the basis of the ongoing
3 investigation exemption, this exemption is inapplicable for the reasons stated above.
4

5 **Incident No. 093330363.26** The defendant objects to release of this report because it
6 contains the address or other personal information of a suspect or potential witness and release
7 would invade that person's privacy. Defendant Allen objects to the release of any statements,
8 notes regarding statements, and transcripts of statements. RPC 3.6 Guidelines I (5) & (6); Bench
9 Press Bar Guidelines 2(a), (b) and (d) and as part of the ongoing investigation. RCW 42.56.240.
10 Additionally, counsel' review reveals that during law enforcement questioning the interviewee
11 was frequently challenged as being untruthful and asked to comment on the credibility and
12 actions of others. These interviews contain unsubstantiated speculation and inadmissible hearsay
13 evidence. It also contains information regarding the collection of evidence to be tested, hearsay,
14 and other inadmissible evidence, including speculation as to other illegal activities.

15 **Response:** Allen lacks standing to object on the grounds that release would invade the
16 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
17 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
18 guidelines are inapplicable for the reasons stated above. Speculation and hearsay are not a basis
19 for withholding documents under the PRA or fair trial rights.
20

21 **Incident No. 093330363.27** The defendant objects to release of this report because it
22 contains the address or other personal information of a suspect or potential witness and release
23 would invade that person's privacy. It also contains information regarding the collection of
24 evidence to be tested.
25
26
27

1 **Response:** Allen lacks standing to object on the grounds that release would invade the
2 privacy rights of another person. To the extent he objects on the basis of the ongoing
3 investigation exemption, this exemption is inapplicable for the reasons stated above.
4

5 **Incident No. 093330363.28** The defendant objects to release of this report because it
6 contains the address or other personal information of a suspect or potential witness and release
7 would invade that person's privacy. It also contains information regarding the collection of
8 evidence to be tested.

9 **Response:** Allen lacks standing to object on the grounds that release would invade the
10 privacy rights of another person. To the extent he objects on the basis of the ongoing
11 investigation exemption, this exemption is inapplicable for the reasons stated above.
12

13 **Incident No. 093330363.29** The defendant objects to release of this report because it
14 contains the address or other personal information of a suspect or potential witness and release
15 would invade that person's privacy. It also contains information regarding the collection of
16 evidence to be tested and what appears to be completely unrelated evidence of illegal activity.

17 **Response:** Allen lacks standing to object on the grounds that release would invade the
18 privacy rights of another person. To the extent he objects on the basis of the ongoing
19 investigation exemption, this exemption is inapplicable for the reasons stated above. The
20 existence of unrelated evidence of illegal activity is not a recognized basis for withholding
21 documents, and there is no explanation as to how releasing the document would affect Allen's
22 fair trial rights.
23

24 **Incident No. 093330363.30** The defendant objects to release of this report under our
25 general objection to items being released. It also contains information regarding the collection of
26 evidence to be tested.
27

1 **Response:** Allen lacks standing to object on the grounds that release would invade the
2 privacy rights of another person. To the extent he objects on the basis of the ongoing
3 investigation exemption, this exemption is inapplicable for the reasons stated above.
4

5 **Incident No. 093330363.31** The defendant objects to release of this report because it
6 contains the address or other personal information of a suspect or potential witness and release
7 would invade that person's privacy. It also contains information regarding the collection of
8 evidence to be tested and what appears to be completely unrelated evidence of personal
9 communications and financial activity.

10 **Response:** Allen lacks standing to object on the grounds that release would invade the
11 privacy rights of another person. To the extent he objects on the basis of the ongoing
12 investigation exemption, this exemption is inapplicable for the reasons stated above. The
13 existence of unrelated evidence of personal communications and financial activity is not a
14 recognized basis for withholding documents, and there is no explanation as to how releasing the
15 document would affect Allen's fair trial rights.
16

17 **Incident No. 093330363.32** The defendant objects to release of this report because it
18 contains the address or other personal information of a suspect or potential witness and release
19 would invade that person's privacy. It also contains information regarding the arrest and
20 assertion of constitutional rights of an accused.

21 **Response:** Allen lacks standing to object on the grounds that release would invade the
22 privacy rights or constitutional rights of another person. Also, the mere assertion of
23 constitutional rights is not a recognized basis for withholding documents under the PRA. Allen
24 also fails to explain how releasing this record would affect his fair trial rights.
25
26
27

1 **Incident No. 093330363.33** This report is exempt because it concerns the collection of
2 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
3 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
4 testimony.

5 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
6 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
7 inapplicable for the reasons stated above. The existence of opinion testimony is not a basis for
8 withholding documents under the PRA or fair trial rights.

9
10 **Incident No. 093330363.34** This report is exempt because it concerns the collection of
11 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
12 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
13 testimony.

14 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
15 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
16 inapplicable for the reasons stated above. The existence of opinion testimony is not a basis for
17 withholding documents under the PRA or fair trial rights.

18
19 **Incident No. 093330363.35** The defendant objects to release of this report because it
20 contains the address or other personal information of a suspect or potential witness and release
21 would invade that person's privacy. It also contains information regarding the arrest and
22 assertion of constitutional rights of an accused and contains hearsay and other inadmissible
23 evidence.

24 **Response:** Allen lacks standing to object on the grounds that release would invade the
25 privacy rights of another person. He also appears to object on the basis of the ongoing
26 investigation exemption; the ongoing investigation exemption is inapplicable for the reasons
27

1 stated above. The existence of unrelated evidence of illegal activity is not a recognized basis for
2 withholding documents, and there is no explanation as to how releasing the document would
3 affect Allen's fair trial rights.
4

5 **Incident No. 093330363.36** This report is exempt because it concerns the collection of
6 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
7 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion
8 testimony. It also includes information regarding witness/suspect arrests and statements.

9 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
10 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
11 inapplicable for the reasons stated above. Inadmissible opinion testimony, information regarding
12 witness/suspect arrests and statements are not a basis for withholding documents under the PRA
13 or fair trial rights.
14

15 **Incident No, 093330363.37** The defendant objects to release of this report because it
16 contains the address or other personal information of a suspect or potential witness and release
17 would invade that person's privacy, including financial information. This report is also exempt
18 because it concerns the collection of items to be tested, testing or results of forensic testing.
19 RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines
20 2(c).

21 **Response:** Allen lacks standing to object on the grounds that release would invade the
22 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
23 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
24 guidelines are inapplicable for the reasons stated above.
25
26
27

1 **Incident No. 093330363.38** This report is also exempt because it concerns the collection
2 of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
3 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

4 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
5 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
6 inapplicable for the reasons stated above.

7
8 **Incident No. 093330363.39** The defendant objects to release of this report because it
9 contains the address or other personal information of a suspect or potential witness and release
10 would invade that person's privacy, including financial information. This report is also exempt
11 because it concerns the collection of items to be tested, testing or results of forensic testing.
12 RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines
13 2(c).

14 **Response:** Allen lacks standing to object on the grounds that release would invade the
15 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
16 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
17 guidelines are inapplicable for the reasons stated above.

18
19 **Incident No. 093330363.40** The defendant objects to release of this report because it
20 contains the address or other personal information of a suspect or potential witness and release
21 would invade that person's privacy, including personal phone records information. This report is
22 also exempt because it concerns the collection of items to be tested, testing or results of forensic
23 testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar
24 Guidelines 2(c).

25 **Response:** Allen lacks standing to object on the grounds that release would invade the
26 privacy rights of another person. The ongoing investigation exemption is inapplicable for the

1 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
2 guidelines are inapplicable for the reasons stated above.

3
4 **Incident No. 093330363.41** The defendant objects to release of this report because it
5 contains the address or other personal information of a suspect or potential witness and release
6 would invade that person's privacy. This report is also exempt because it concerns the collection
7 of items to be tested, testing or results of forensic testing. RCW 42.36.240 (investigative results)
8 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

9 **Response:** Allen lacks standing to object on the grounds that release would invade the
10 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
11 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
12 guidelines are inapplicable for the reasons stated above.

13
14 **Incident No. 093330363.42** The defendant objects to release of this report because it
15 contains the address or other personal information of a suspect or potential witness and release
16 would invade that person's privacy, including financial information. This report is also exempt
17 because it concerns the collection of items to be tested, testing or results of forensic testing.
18 RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines
19 2(c).

20 **Response:** Allen lacks standing to object on the grounds that release would invade the
21 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
22 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
23 guidelines are inapplicable for the reasons stated above.

24
25 **Incident No. 093330363.43** The defendant objects to release of this report because it
26 contains the address or other personal information of a suspect or potential witness and release
27

1 would invade that person's privacy, including financial information. This report is also exempt
2 because it concerns the collection of items to be tested, testing or results of forensic testing.
3 RCW 42 6.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

4 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
5 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
6 inapplicable for the reasons stated above.

7
8 **Incident No. 093330363.44** The defendant objects to release of this report because it
9 contains the address or other personal information of a suspect or potential witness and release
10 would invade that person's privacy, including social welfare and financial information. This
11 report is also exempt because it concerns the collection of items to be tested, testing or results of
12 forensic testing. RCW 42 ,6 240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press
13 Bar Guidelines 2(c).

14 **Response:** Allen lacks standing to object on the grounds that release would invade the
15 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
16 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
17 guidelines are inapplicable for the reasons stated above.

18
19 **Incident No. 093330363.45** The defendant objects to release of this report because it
20 contains the address or other personal information of a suspect or potential witness and release
21 would invade that person's privacy, including social welfare and financial information. This
22 report is also exempt because it concerns the collection of items to be tested, testing or results of
23 forensic testing. RCW 42 6.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press
24 Bar Guidelines 2(c).

25 **Response:** Allen lacks standing to object on the grounds that release would invade the
26 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
27

1 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
2 guidelines are inapplicable for the reasons stated above.

3
4 **Incident No. 093330363.46** The defendant objects to release of this report because it
5 contains the address or other personal information of a suspect or potential witness and release
6 would invade that person's privacy. This report is also exempt because it includes impermissible
7 officer opinions of guilt.

8 **Response:** Allen lacks standing to object on the grounds that release would invade the
9 privacy rights of another person. Officer opinions of guilt are not a basis for withholding
10 documents under the PRA or fair trial rights.

11
12 **Incident No. 093330363.47** The defendant objects to release of this report because it
13 contains the address or other personal information of a suspect or potential witness and release
14 would invade that person's privacy. This report is also exempt because it contains statement
15 evidence and includes hearsay and other inadmissible evidence. This report is also exempt
16 because it concerns the collection of items to be tested, testing or results of forensic testing.
17 RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines
18 2(c).

19 **Response:** Allen lacks standing to object on the grounds that release would invade the
20 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
21 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
22 guidelines are inapplicable for the reasons stated above.

23
24 **Incident No. 093330363.48** The defendant objects to release of this report because it
25 contains the address or other personal information of a suspect or potential witness and release
26 would invade that person's privacy, including social welfare and financial information and
27

1 impermissible police opinions regarding witness credibility. This report is also exempt because
2 it concerns the collection of items to be tested, testing or results of forensic testing. RCW
3 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

4 **Response:** Allen lacks standing to object on the grounds that release would invade the
5 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
6 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
7 guidelines are inapplicable for the reasons stated above.

8
9 **Incident No. 093330363.49** The defendant objects to release of this report because it
10 contains the address or other personal information of a suspect or potential witness and release
11 would invade that person's privacy, including social welfare and financial information. This
12 report is also exempt because it concerns the collection of items to be tested, testing or results of
13 forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press
14 Bar Guidelines 2(c).

15 **Response:** Allen lacks standing to object on the grounds that release would invade the
16 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
17 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
18 guidelines are inapplicable for the reasons stated above.

19
20 **Incident No. 093330363.50** The defendant objects to release of this report because it
21 contains the address or other personal information of a suspect or potential witness and release
22 would invade that person's privacy. This documents also contains exempt "tip" data.

23 **Response:** Allen lacks standing to object on the grounds that release would invade the
24 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
25 reasons stated above.

1 **Incident No. 093330363.51** This report is exempt because it concerns the collection of
2 items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
3 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

4 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
5 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
6 inapplicable for the reasons stated above.

7
8 **Incident No. 093330363.52** Defendant objects to the release of the document because it
9 contains the address of an uncharged individual. This report is also exempt because it concerns
10 the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240
11 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

12 **Response:** Allen lacks standing to object on the grounds that release would invade the
13 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
14 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
15 guidelines are inapplicable for the reasons stated above.

16
17 **Incident No. 093330363.53** The defendant objects to release of this report because it
18 contains the address or other personal information of a suspect or potential witness and release
19 would invade that person's privacy. This report is also exempt because it concerns the collection
20 of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
21 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

22 **Response:** Allen lacks standing to object on the grounds that release would invade the
23 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
24 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
25 guidelines are inapplicable for the reasons stated above.

1 **Incident No. 093330363.54** The defendant objects to release of this report because it
2 contains the address or other personal information of a suspect or potential witness and release
3 would invade that person's privacy. It also contains impermissible opinion and hearsay
4 evidence, including allegations of gang association.

5 **Response:** Allen lacks standing to object on the grounds that release would invade the
6 privacy rights of another person. Opinion testimony and hearsay evidence are not a basis for
7 withholding documents under the PRA or fair trial rights.

8
9 **Incident No. 093330363.55** The defendant objects to release of this report because it
10 contains the address or other personal information of a suspect or potential witness and release
11 would invade that person's privacy.

12 **Response:** Allen lacks standing to object on the grounds that release would invade the
13 privacy rights of another person.

14
15 **Incident No. 093330363.56** The defendant objects to release of this report because it
16 contains the address or other personal information of a suspect or potential witness and release
17 would invade that person's privacy, including Mr. Hinton's personal address and vehicle
18 ownership of an uncharged individual. *Cowles, supra.*

19 **Response:** Allen lacks standing to object on the grounds that release would invade the
20 privacy rights of another person.

21
22 **Incident No. 093330363.57** The defendant objects to release of this incident report
23 because it identifies the residence of an unnamed party, which constitutes an invasion of privacy
24 to that individual.

25 **Response:** Allen lacks standing to object on the grounds that release would invade the
26 privacy rights of another person.

1
2 **Incident No. 093330363.58** The defendant objects to release of photo of Maurice
3 Clemmons.

4 **Response:** Allen provides no justification for objecting to release of this photo.
5 Moreover, he lacks standing to object on the grounds that release would invade the privacy rights
6 of Clemmons. The rest of this document should be released immediately.

7
8 **Incident No. 093330363.59** The defendant objects to release of this incident report and
9 the statement referred to in the incident report because it is a statement from a prospective
10 witness or suspect.

11 **Response:** Allen fails to explain why this report should not be released, merely noting
12 that it is from a prospective witness or suspect does not explain the basis for withholding under
13 the PRA or his fair trial rights. To the extent that it is based on the third party's privacy rights,
14 he lacks standing.

15
16 **Incident No. 093330363.60** The defendant objects to release of this incident report
17 because it refers to the names and addresses of individuals not known to be connected to this
18 matter and would constitute an invasion of their privacy.

19 **Response:** Allen lacks standing to object on the grounds that release would invade the
20 privacy rights of another person.

21
22 **Incident No. 093330363.61** The defendant objects to release of this report because it
23 relates to an on-going investigation.

24 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
25 above.

1 **Incident No. 093330363.62** The defendant objects to release of this report because it
2 lists the address of people either not known to be connected to this matter or potential witnesses.
3 Release would constitute an invasion of their privacy.

4 **Response:** Allen lacks standing to object on the grounds that release would invade the
5 privacy rights of another person.

6
7 **Incident No. 093330363.63** The defendant objects to release of this document because it
8 contains the address of people not charged in this case and would invade their privacy.

9 **Response:** Allen lacks standing to object on the grounds that release would invade the
10 privacy rights of another person.

11
12 **Incident No. 093330363.64** The defendant objects to release of this report because it
13 contains witness statements and statements from suspects.

14 **Response:** Allen fails to explain why this report should not be released, merely noting
15 that it is from suspects, but does not explain the basis for withholding under the PRA or his fair
16 trial rights. To the extent that it is based on the third party's privacy rights, he lacks standing.

17
18 **Incident No. 093330363.65** The defendant objects to release of this report because it
19 contains information related to witness statements.

20 **Response:** Allen fails to explain why this report should not be released, merely noting
21 that it is related to witness statements, but he does not explain the basis for withholding under the
22 PRA or his fair trial rights. To the extent that it is based on the third party's privacy rights, he
23 lacks standing.

1 **Incident No. 093330363.66** The defendant objects to the release of this report contains
2 witness statements, phone numbers of people not charged or otherwise known to be related to
3 this case, and contains statements from suspect/defendant Hinton.

4 **Response:** Allen lacks standing to object on the grounds that release would invade the
5 privacy rights of another person.

6
7 **Incident No. 093330363.67** The defendant objects to the release of this report because it
8 contains a suspects address and release would invade the person's privacy.

9 **Response:** Allen lacks standing to object on the grounds that release would invade the
10 privacy rights of another person.

11
12 **Incident No. 093330363.68** The defendant objects to the release of this report because it
13 contains the address of a suspect and would invade that person's privacy.

14 **Response:** Allen lacks standing to object on the grounds that release would invade the
15 privacy rights of another person.

16
17 **Incident No. 093330363.69** The defendant objects to the release of this report because it
18 contains the address of a suspect and of potential witnesses and release would invade their
19 privacy.

20 **Response:** Allen lacks standing to object on the grounds that release would invade the
21 privacy rights of another person.

22
23 **Incident No. 093330363.70** The defendant objects to release of this report because it
24 contains the address of a suspect/defendant Latonya Clemmons and other potential witnesses and
25 release would invade their privacy.

1 **Response:** Allen lacks standing to object on the grounds that release would invade the
2 privacy rights of another person.

3
4 **Incident No. 093330363.71** The defendant objects to release of this report because it
5 contains the address of suspects or potential witnesses and release would invade their privacy.

6 **Response:** Allen lacks standing to object on the grounds that release would invade the
7 privacy rights of another person.

8
9 **Incident No. 093330363.72** The defendant objects to the release of this report because it
10 contains the address of a suspect and potential witness and release would constitute an invasion
11 of their privacy.

12 **Response:** Allen lacks standing to object on the grounds that release would invade the
13 privacy rights of another person.

14
15 **Incident No. 093330363.73** The defendant objects to release of this report because it
16 contains statements from suspects and potential witnesses.

17 **Response:** The existence of witness statements and statements from suspects is not a
18 basis for withholding documents under the PRA or fair trial rights.

19
20 **Incident No. 093330363.74** The defendant objects to release of this report because it
21 contains statements by a potential witness.

22 **Response:** The existence of witness statements is not a basis for withholding documents
23 under the PRA or fair trial rights.

1 **Incident No. 093330363.75** The defendant objects to release of this report because it
2 contains the address of a suspect or potential witness and release would invade that person's
3 privacy.

4 **Response:** Allen lacks standing to object on the grounds that release would invade the
5 privacy rights of another person.

6
7 **Incident No. 093330363.76** The defendant objects to release of this report because it
8 contains the address of a suspect or potential witness and release would invade that person's
9 privacy.

10 **Response:** Allen lacks standing to object on the grounds that release would invade the
11 privacy rights of another person.

12
13 **Incident Nos. 093330363.77 through 121**

14 Defendant objects to release of each of these reports. Interviews of defendants and
15 witnesses are in .78, .79, .80, .81, .82, .86, .88, .90, .92, .95, .96, .97, .98,
16 .102, .107, .108, .111, .115, .116, .117, .119, and .120.

17 Evidence was collected and mentioned in .76, .84, .85, .90, .93, .95, .100, .101, .103,
18 .105, .106, .109, .110, .112, .114, .118, .119, and .120.

19 Search warrants and entries are referenced in .76, .87, .99, .104, .108, .113, and .119.

20 Details of the ongoing investigation are in .77, .83, .84, .90, .91, .92, .104, .120, and .121.

21 Arrests of defendants are in .89 and .90.

22 **Response:** Ongoing investigation exemption is inapplicable for the reasons stated above.
23 Allen does not attempt to explain how these documents might be prejudicial to his fair trial
24 rights. A generalized fear of publicity does not justify limiting public access.

1 **Incident No. 093330363.122** The defendant objects to the release of this report because
2 it contains refers to a photo montage and constitutes an exception to release.

3 **Response:** Allen does not attempt to cite a specific exemption to prevent release. He
4 lacks standing to object on the grounds that release would invade the privacy rights of the other
5 person.

6
7 **Incident No. 093330363.123** The defendant objects to the release of this report because
8 it contains statements made by suspects and may be inadmissible. CFR 3.5 hearing has not been
9 held in this matter.

10 **Response:** Allen lacks standing to object on the grounds that release would invade the
11 privacy rights of another person. Whether a CFR hearing has been held is irrelevant.

12
13 **Incident No. 093330363.124** The defendant objects to the release of this report because
14 it pertains to an ongoing investigation.

15 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
16 above.

17
18 **Incident No. 093330363.125** The defendant objects to the release of this report because
19 it contains statements made by a defendant, contains inadmissible opinions from the officer
20 regarding the truthfulness of a witness/suspect, Latanya Clemmons and contains personal
21 information regarding potential witnesses.

22 **Response:** Allen lacks standing to object on the grounds that release would invade the
23 privacy rights of another person.

24
25 **Incident No. 093330363.126** The defendant objects to release of this report because it
26 contains information about video that may be inadmissible due to the poor quality of the tape.

1 There is no indication what relevance the tape might have to the charges. The report contains a
2 description of the recording procedures of a business. Release might compromise the security of
3 that business.

4 **Response:** Whether or not the video is admissible or relevant is not a recognized basis
5 for preventing the video's release. Allen also lacks standing to object on the grounds that release
6 would invade the security interests of that business.

7
8 **Incident No. 093330363.127** The defendant objects to release of this report because it
9 contains information about a video tape that because of the poor quality could not be viewed and
10 because the camera was not pointed towards the area of interest. The video would therefore
11 likely be inadmissible at trial.

12 **Response:** Whether or not the video is admissible is not a recognized basis for
13 preventing the video's release.

14
15 **Incident No. 093330363.128** The defendant objects to the release of this report because
16 it contains private information regarding a witness and statements made by potential suspects.

17 **Response:** Allen lacks standing to object on the grounds that release would invade the
18 privacy rights of another person.

19
20 **Incident No. 093330363.129** The defendant objects to release of this report because it
21 contains information regarding surveillance videos that do not show anything relevant to this
22 case and would therefore be inadmissible. The report also contains private information about the
23 owners of the surveillance equipment.

24 **Response:** Whether or not the information is admissible or relevant is not a recognized
25 basis for preventing the report's release. Allen also lacks standing to object on the grounds that
26 release would invade the privacy interests of the owners of the surveillance equipment.

1
2 **Incident No. 093330363.130** The defendant objects to the release of this report because
3 it contains private information regarding the surveillance equipment and the content of the video
4 was determined not to have anything of relevance in it and would therefore be inadmissible at
5 trial.

6 **Response:** Whether or not the report is admissible or relevant is not a recognized basis
7 for preventing the report's release.

8
9 **Incident No. 093330363.131** The defendant objects to release of this report because it
10 pertains to an on-going investigation.

11 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
12 above.

13
14 **Incident No. 093330363.32** The defendant objects to the release of this report because it
15 contains the statements of witnesses and of a suspect and defendant. There has been no CFR 3.5
16 hearing and the statements have not been ruled as admissible.

17 **Response:** Allen lacks standing to object on the grounds that release would invade the
18 rights of another person. Whether a CFR hearing has been held is irrelevant.

19
20 **Incident No. 093330363.133** The defendant objects to the release of this report because
21 it contains private information regarding cell phone numbers.

22 **Response:** The existence of cell phone numbers is not a basis for withholding
23 documents. Even if the cell phone numbers were a recognized basis, the Court may order the
24 numbers redacted and release the remaining document.

1 **Incident No. 093330363.134** The defendant objects to the release of this report because
2 it contains private cell phone numbers.

3 **Response:** The existence of cell phone numbers is not a basis for withholding
4 documents. Even if the cell phone numbers were a recognized basis, the Court may order the
5 numbers redacted and release the remaining document.

6
7 **Incident No. 093330363.135** The defendant objects to the release of this report because
8 it contains private cell phone numbers.

9 **Response:** The existence of cell phone numbers is not a basis for withholding
10 documents. Even if the cell phone numbers were a recognized basis, the Court may order the
11 numbers redacted and release the remaining document.

12
13 **Incident No. 093330363.136** The defendant objects to the release of this report because
14 it contains the results of forensic analysis of fingerprints.

15 **Response:** Allen has cited to no statute that exempts forensic analysis of fingerprints
16 from the PRA, and he has not explained how releasing the report would impair his fair trial
17 rights.

18
19 **Incident No. 093330363.137** The defendant objects to the release of this report because
20 it contains private cell phone numbers.

21 **Response:** The existence of cell phone numbers is not a basis for withholding
22 documents. Even if the cell phone numbers were a recognized basis, the Court may order the
23 numbers redacted and release the remaining document.

24
25 **Incident No. 093330363.138** The defendant objects to release of this report because it
26 contains the address of a suspect or potential witness and release would invade that person's
27

1 privacy. It also has information regarding witness identifications that have not been ruled upon
2 as admissible in court.

3 **Response:** Allen lacks standing to object on the grounds that release would invade the
4 privacy rights of another person. The existence of witness identifications is not a recognized
5 basis for withholding the document.

6
7 **Incident No. 093330363.139** The defendant objects to release of this report because it
8 contains the address of a suspect or potential witness and release would invade that person's
9 privacy and containing hearsay, inadmissible opinion information and It also contains personal
10 information that is not pertinent to these cases, including information regarding medical
11 conditions of a person named in the report. It contains information regarding protected jail
12 records and information concerning defendant interviews.

13 **Response:** Allen lacks standing to object on the grounds that release would invade the
14 privacy rights of another person. To the extent that Allen is relying on HIPAA and state medical
15 privacy laws, these laws apply to health care providers, *see* 45 C.F.R. 164.501, or RCW
16 70.02.020. Because the PCSO is not a health care provider under these statutes, they are not a
17 basis for withholding. In any event, a covered entity may still release "de-identifiable
18 information," meaning, records with personal identifiable information redacted, such as name,
19 date and social security number. Allen has cited to no statute that exempts protected jail records
20 and information concerning defendant interviews from release under the PRA, and he has not
21 explained how releasing this document would impair his fair trial rights.

22
23 **Incident No. 093330363.140** Defendant objects to the release of any statements, notes
24 regarding statements, and transcripts of statements. RPC 3.6 Guidelines I (5) & (6); Bench Press
25 Bar Guidelines 2(a), (b) and (d) and as part of the ongoing investigation. RCW 42.56.240.
26 Additionally, counsel' review reveals that during law enforcement questioning the interviewee
27

1 was frequently challenged as being untruthful and asked to comment on the credibility and
2 actions of others. These interviews contain unsubstantiated speculation and inadmissible hearsay
3 evidence.

4 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
5 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
6 inapplicable for the reasons stated above. The existence of speculation and hearsay evidence is
7 not a basis for withholding documents under the PRA or fair trial rights.

8
9 **Incident No. 093330363.141** Defendant objects as protected information under the on-
10 going investigation exemption.

11 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
12 above.

13
14 **Incident No. 093330363.142** Defendant objects to the release of personal phone number
15 /pen registration data.

16 **Response:** The existence of personal phone number /pen registration data is not a basis
17 for withholding documents. Even if they were a recognized basis, the Court may order the
18 numbers redacted and release the remaining document.

19
20 **Incident No. 093330363.143** Defendant objects to the release of personal phone number
21 /pen registration data.

22 **Response:** The existence of personal phone number /pen registration data is not a basis
23 for withholding documents. Even if they were a recognized basis, the Court may order the
24 numbers redacted and release the remaining document.

1 **Incident No. 093330363.144** The defendant objects to release of this report because it
2 contains the address of a suspect or potential witness and release would invade that person's
3 privacy. It also has information regarding addresses for search warrant activities that are not at
4 issue in this case.

5 **Response:** Allen lacks standing to object on the grounds that release would invade the
6 privacy rights of another person. The existence of search warrant activities not at issue in this
7 case is not a recognized basis for withholding the document.

8
9 **Incident No. 093330363.145** The defendant objects to release of this report because it
10 contains the address or other personal information of a suspect or potential witness and release
11 would invade that person's privacy. This report is also exempt because it concerns the collection
12 of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
13 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

14 **Response:** Allen lacks standing to object on the grounds that release would invade the
15 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
16 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
17 guidelines are inapplicable for the reasons stated above.

18
19 **Incident No. 093330363.146** The defendant objects to release of this report because it
20 contains the address or other personal information of a suspect or potential witness and release
21 would invade that person's privacy. This report is also exempt because it concerns the collection
22 of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
23 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

24 **Response:** Allen lacks standing to object on the grounds that release would invade the
25 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
26
27

1 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
2 guidelines are inapplicable for the reasons stated above.

3
4 **Incident No. 093330363.147** This report is also exempt because it concerns the
5 collection of items to be tested, testing or results of forensic testing. RCW 42.56.240
6 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c) and includes
7 private telephone numbers.

8 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
9 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
10 inapplicable for the reasons stated above. The existence of unsubstantiated speculation and
11 inadmissible hearsay evidence are not a basis for withholding documents under the PRA or fair
12 trial rights.

13
14 **Incident No. 093330363.148** This report is also exempt because it concerns the
15 collection of items to be tested, testing or results of forensic testing. RCW 42.56.240
16 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

17 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
18 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
19 inapplicable for the reasons stated above.

20
21 **Incident No. 093330363.149** The defendant objects to release of this report because it
22 contains the address or other personal information of a suspect or potential witness and release
23 would invade that person's privacy.

24 **Response:** Allen lacks standing to object on the grounds that release would invade the
25 privacy rights of another person.

1 **Incident No. 093330363.151** Defendant objects to the release of any statements, notes
2 regarding statements, and transcripts of statements. RPC 3.6 Guidelines I (5) & (6); Bench Press
3 Bar Guidelines 2(a), (b) and (d) and as part of the ongoing investigation. RCW 42.56.240.
4 Additionally, counsel' review reveals that during law enforcement questioning the interviewee
5 was frequently challenged as being untruthful and asked to comment on the credibility and
6 actions of others. These interviews contain unsubstantiated speculation and inadmissible hearsay
7 evidence.

8 **Response:** The ongoing investigation exemption is inapplicable for the reasons stated
9 above. The RPCs are inapplicable for the reasons stated above. The BBP guidelines are
10 inapplicable for the reasons stated above. Speculation and hearsay evidence are not a basis for
11 withholding documents under the PRA or fair trial rights.

12
13 **Incident No. 093330363.155** The defendant objects to release of this report because it
14 contains the address or other personal information of a suspect or potential witness and release
15 would invade that person's privacy. This report is also exempt because it concerns the collection
16 of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results)
17 RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

18 **Response:** Allen lacks standing to object on the grounds that release would invade the
19 privacy rights of another person. The ongoing investigation exemption is inapplicable for the
20 reasons stated above. The RPCs are inapplicable for the reasons stated above. The BBP
21 guidelines are inapplicable for the reasons stated above.

22 23 **12. Case Summary**

24 Defendant objects to the release of the case summary log under the ongoing investigation
25 exception. The summary incorporates includes inadmissible hearsay and speculation and
26 includes officer opinions and assumptions that would deny defendant a fair trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED this 18th day of May, 2010.

Davis Wright Tremaine LLP
Attorneys for The Seattle Times Company

By /s/ Sarah K. Duran
Eric M. Stahl, WSBA #27619
Sarah K. Duran, WSBA #38954

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I hereby certify that on May 18, 2010, I electronically filed the foregoing with the Clerk of the Court using the LINX E-filing system and served via email a copy of THE SEATTLE TIMES' OPPOSITION TO MEMORANDUM RE: OBJECTION TO PCSO DOCUMENTS IDENTIFIED FOR RELEASE to the email addresses specified below:

- Craig Adams at cadams@co.pierce.wa.us
- Steve Penner at spenner@co.pierce.wa.us
- Kevin McCann at kmccann@co.pierce.wa.us
- John O'Melveny at jomelveny@harbornet.com
- Phil Thornton at pthorntonatty@qwestoffice.net
- Chip Mosley at chipmosley3@yahoo.com
- Keith MacFie at dalymac@harbornet.com
- Helen Whitener at whitenerh@wrwattorneys.com
- Mary K. High at mhigh@co.pierce.wa.us
- Thomas Miller at tom@christielawgroup.com
- Kent Underwood at kent.underwood@kunderwoodlaw.com
- William Michael Hanbey at hanbeyps@olywa.net

DATED this 18th day of May, 2010, at Seattle, Washington.


Anita Griffin

EXHIBIT J

(Seattle Times Co. v. Sarko)

The Honorable Susan Serko

SUPERIOR COURT OF THE STATE OF WASHINGTON
PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

EDDIE LEE DAVIS,
DOUGLAS EDWARD DAVIS,
RICKEY HINTON,
QUIANA M. WILLIAMS,
LATRECIA NELSON,
LATANYA K. CLEMMONS,
DARCUS ALLEN.

Defendants

) No. 09-1-05374-1
) No. 09-1-05375-0
) No. 09-1-05430-6
) No. 09-1-05452-7
) No. 09-1-05453-5
) No. 09-1-05523-0
) No. 10-1-00938-0

) THE SEATTLE TIMES' OBJECTIONS
) TO COURT'S MAY 20, 2010
) FINDINGS AND ORDER RE: *IN*
) *CAMERA* REVIEW OF PCSO
) DOCUMENTS

I. INTRODUCTION

The Seattle Times Company (the "Times") respectfully submits the following objections to the Court's May 20 findings and preliminary order. The proposed order is based on four distinct, demonstrable errors of law, all of which understate the extent of the public's right of access to investigative records and court proceedings. Each error is significant in its own right. Collectively, they suggest that the *in camera* review of the records at issue needs to be revisited, with all of the records reevaluated in light of the correct legal standards.

First, the May 20 order incorrectly finds that "[m]embers of the public have no constitutional right to attend criminal trials." Order at 6. This statement is contrary to three decades of unequivocal decisions from both the U.S. and Washington supreme courts holding

1 that the public does have such a right, and that it may be restricted only upon a specific,
2 heightened showing that has not been made in this case.

3 Second, the Court erred by finding that a mere possibility of additional pretrial publicity
4 justifies denying access to the records at issue. The generalized fear of publicity cited by the
5 Court is insufficient under Washington law to implicate the defendants' fair trial rights. The
6 relevant question is whether there is a substantial probability that the Court will be unable to seat
7 an impartial jury. No such probability has been found here. To the contrary, the Court has found
8 that the publicity to date has *not* been prejudicial. Moreover, even if any defendant had
9 established such a risk to fair trial rights, categorical nondisclosure still would not be appropriate.
10 Rather, the Court would then need to follow *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640
11 P.2d 716 (1982), which requires the Court to apply the least access-restrictive alternatives
12 possible and to make specific factual findings, among other things.

13 Third, the Public Records Act provision relied on by the Court to withhold records (RCW
14 42.56.540) is not a PRA exemption at all. Rather, as the Washington Supreme Court has held on
15 multiple occasions, RCW 42.56.540 is a procedural provision, not an independent basis for
16 withholding public records. The records at issue must be released unless a specific PRA
17 exemption applies.

18 Fourth, the Court misconstrues the PRA's investigative records exemption by relying on
19 the analysis set out in *Newman v. King County*, 133 Wn.2d 565, 947, P.2d 712 (1997). *Newman*
20 was significantly limited in *Cowles Publishing Co. v. Spokane Police Department*, 139 Wn.2d
21 472, 987 P.2d 620 (1999), which holds that investigative records are presumptively disclosable
22 under the PRA where, as here, a suspect has already been identified and charged.

23 *Cowles* also holds that a defendant's constitutional right to a fair trial does not compel
24 categorical nondisclosure of investigative records about the underlying case. That is the ultimate
25 error of the May 20 order. The Court appears to assume that public records can be categorically
26 withheld with respect to any defendant whose trial is forthcoming. But there is no "pending
27 trial" exemption to disclosure of public records. On the contrary:

1 Nor does a defendant's constitutional right to a fair trial compel
2 categorical nondisclosure of police investigative records. *Facts*
3 *regarding pending criminal prosecutions are often made public*
4 *prior to trial. This rarely results in the inability to impanel a fair*
5 *and impartial jury.* Similarly, the fact that allegations have not yet
6 been proven is not persuasive of the need to provide blanket
7 protection for purposes of a defendant's privacy. When a criminal
8 suspect is arrested and charged with a crime there must be some
9 factual basis for this, whether or not all or any of the allegations
10 can be proven beyond a reasonable doubt at trial. *The general*
11 *public is well aware that a person is innocent until proven guilty.*

12 *Cowles*, 139 Wn.2d at 479 (emphasis added).

13 The Times respectfully urges the Court to re-assess the records at issue in light of the
14 foregoing and to amend its order accordingly. Specifically, under the PRA, the Court may
15 withhold only those portions of the investigative records for which "nondisclosure is essential to
16 effective law enforcement." RCW 42.56.240(1). Moreover, no record can be withheld on Sixth
17 Amendment grounds unless the Court (1) specifically find that its release poses a probable risk
18 that an impartial jury could not be seated — a standard that defendants have failed to demonstrate
19 here — and (2) follows the analysis set forth in *Ishikawa* and its progeny.

16 II. OBJECTIONS

17 A. Contrary to the Court's order, the press and public have a well-established 18 constitutional right of access to criminal proceedings.

19 The Court's order, at page 6, states that "[m]embers of the public have no constitutional
20 right to attend criminal trials." This is plainly erroneous, as both a matter of federal and state
21 law. The public's right of access to criminal trials — and to criminal proceedings and court
22 records — is constitutionally guaranteed. This Court's analysis of the records at issue must
23 proceed from this premise of openness.

24 The Court relies on *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 378 (1979), for the
25 proposition that the public has no right of access to criminal trials. However, both the Supreme
26 Court and Ninth Circuit have held repeatedly that the public and press do have a First
27 Amendment right to attend criminal court trials and other proceedings. "The first amendment

1 guarantees the public and the press the right to attend criminal trials." *Seattle Times v. United*
2 *States District Court*, 845 F.2d 1513, 1515 (9th Cir. 1988); accord, *Richmond Newspapers, Inc.*
3 *v. Virginia*, 448 U.S. 555, 573 (1980); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596
4 (1982); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 9 (1986); *Associated Press v. United*
5 *States District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983).¹

6 In Washington, the public's right of access to criminal court proceedings is guaranteed by
7 Article I, Section 10 of the state constitution, which states: "Justice in all cases shall be
8 administered openly, and without unnecessary delay." *State v. Easterling*, 157 Wn.2d 167, 174,
9 137 P.3d 825 (2006) ("This latter provision gives the public and the press a right to open and
10 accessible court proceedings."); *Ishikawa*, 97 Wn.2d at 36. This right not only assures an
11 informed public, but also protects the integrity of the judicial process: "Justice must be
12 conducted openly to foster the public's understanding and trust in our judicial system and to give
13 judges the check of public scrutiny. Secrecy fosters mistrust. This openness is a vital part of our
14 constitution and our history." *Dreiling v. Jain*, 151 Wn.2d 900, 903-04, 93 P.3d 861 (2004).

15 In an unbroken line of cases dating back to *Ishikawa*, the Washington Supreme Court has
16 repeatedly affirmed and expanded the public's constitutional right of access, applying it to,
17 among other things, pretrial motions and records (*Ishikawa*, 97 Wn.2d 30); sexual assault
18 proceedings (*Allied Daily Newspapers v. Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258 (1993));
19 suppression hearings (*State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995)); severance
20 hearings (*Easterling*, 157 Wn.2d at 171-72); and jury selection (*State v. Strode*, 167 Wn.2d 222,
21 217 P.3d 310 (2009)). These standards have also been applied to records filed with the Court.
22 *Ishikawa*, 97 Wn.2d 30; *Dreiling*, 151 Wn.2d 900; *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 114
23 P.3d 1182 (2005).

24
25
26 ¹ *Gannett* states only that there is no public right of access to criminal proceedings arising under
27 the *Sixth* Amendment. As the Supreme Court explained the following year after it ruled in
Gannett, there is such a right arising under the *First* Amendment. *Richmond Newspapers*, 448
U.S. at 564 (also recognizing that *Gannett* did not decide the First Amendment issue).

Each of these cases holds that public access may be curtailed only in narrow circumstances, and only after a heightened showing has been made. That standard is discussed below. As a threshold matter, however, the Court must reconsider its statement that there is no public right to attend criminal trials. Moreover, the Times respectfully urges that the Court's review of the issues raised in this matter must, as directed by the Washington Supreme Court, begin from the premise that public access is presumed, and is of paramount importance.

B. Generalized concerns about pretrial publicity are insufficient to overcome the public's right of access to criminal proceedings or to the records at issue.

The Court's order notes, at page 7, that the events of November 29, 2009, have generated substantial news coverage, but finds that none of it has been unduly prejudicial to date. The order goes on to state that release of the investigative records "may" jeopardize the defendants' fair trial rights. This appears to be the only finding supporting the Court's conclusion that the Sixth Amendment requires withholding essentially all of the requested records.

The Times respectfully submits that the Court has applied the wrong legal standard for evaluating pretrial publicity. First, this matter can be decided entirely under the PRA, by considering whether any specific record falls within the investigative records exemption. (*See* Section D, *infra*). There is no basis for considering pretrial publicity concerns absent a showing of probable prejudice — meaning a *likelihood* that a fair jury cannot be seated. *See* Section 1 below. Even if the Court finds there is a fair trial concern, any limitation to public access to information about this case would have to be applied narrowly, and in compliance with *Ishikawa*. *See* Section 2.

1. Defendants have failed to raise sufficient concerns about prejudicial pretrial publicity.

The mere potential for future news coverage is insufficient to raise any Sixth Amendment concern. *Cowles* specifically rejected the notion that categorical nondisclosure of investigative files is necessary to protect a suspect's fair trial rights, noting that release of information about pending prosecutions is common, and "rarely results in the inability to impanel a fair and

impartial jury." *Cowles*, 139 Wn.2d at 479. Whether protection of the trial process is an issue in a given case requires a "factual determination on a case-by-case basis." *Id.*

In order to implicate a defendant's fair trial rights, the publicity must be *prejudicial*. This occurs only where the publicity is so pervasive that it is impossible to seat an impartial jury. *State v. Whitaker*, 133 Wn. App. 199, 212, 135 P.3d 923 (2006). "The relevant question is not whether the community remembered the case, but whether the jurors at the trial had such fixed opinions that they could not judge impartially the guilt of the defendant. The best way to find out if the jurors have opinions so fixed that they cannot be impartial is *to attempt to empanel a jury.*" *Id.* (citing *State v. Jackson*, 150 Wash.2d 251, 269, 76 P.3d 217 (2003)). Even where news coverage has been pervasive, limits on the public's right of access are not permitted unless the defendant shows, among other things, a "substantial probability that irreparable damage to the defendant's fair trial right will result if access is maintained," that no adequate alternatives exist, and that the proposed restriction will be effective. *Seattle Times Co. v. United States Dist. Ct.*, 845 F.2d 1513, 1517-18 (9th Cir. 1988).

No such showing has been made here. While news coverage of the November 29 events may have been extensive, this Court has already found that it has not been prejudicial to these defendants. (Indeed, most of the coverage has not been about these defendants at all, but rather about the shootings and Maurice Clemmons.) The defendants here have offered no reason to believe that release of the records will make it at all difficult to seat an impartial jury.

2. Before the Court denies access to the public based on fair trial concerns, it must apply the factors set out in *Ishikawa* and its progeny.

Even if the Court were to find a substantial probability that pretrial publicity posed a risk to defendants' fair trial rights, the remedy would not be to withhold all access to the investigative reports at issue. Rather, the Court must also evaluate whether the defendant's fair trial rights justify any restriction on public access, based on the test set forth in *Ishikawa*. The Supreme Court has described this as "a strict, well-defined standard" intended to assure "careful, case-by-

1 case analysis" when restrictions on public access are sought. *Bone-Club*, 128 Wn.2d at 258-59.

2 *Ishikawa* requires the following:

- 3 1. The proponent of closure and/or sealing must make some
4 showing of the need therefor.. .
- 5 2. Anyone present when the closure ... motion is made must
6 be given an opportunity to object ...
- 7 3. The court ... should carefully analyze whether the
8 requested method for curtailing access would be both the least
9 restrictive means available and effective in protecting the interests
10 threatened.. .
- 11 4. The court must weigh the competing interests of the
12 defendant and the public, and consider the alternative methods
13 suggested. Its consideration of these issues should be articulated in
14 its findings and conclusions, which should be as specific as
15 possible rather than conclusory. . . .
- 16 5. The order must be no broader in its application or duration
17 than necessary to serve its purpose. . . .

18 *Ishikawa*, 97 Wn.2d at 37-39 (citations omitted).

19 The Court's May 20 order fails to comply with *Ishikawa* and its progeny. Under that
20 authority, the Court cannot rely on fair trial concerns as a basis for denying access to the public
21 records at issue without undergoing the following analysis:

22 a. Need for restriction

23 The evidence must show a "serious and imminent threat" to the interests at issue.
24 *Ishikawa*, 97 Wn.2d at 37. Where the interest asserted is a defendant's fair trial rights, the
25 standard is "likelihood of jeopardy." *Id.* As noted above, the Defendants have provided no
26 evidence to suggest prejudice to their fair trial right is likely. The Court's order states only that
27 potential future news coverage "may" jeopardize the defendants' fair trial rights. That finding is
insufficient.

b. Opportunity to object

The Times does not contest this factor.

e. **No broader in its application or duration than necessary**

The Supreme Court has held that when applying this factor in the context of court files, "[e]ntire documents should not be protected where mere redaction of sensitive items will satisfy the need for secrecy." *Dreiling*, 151 Wn.2d at 917. The May 20 order withholds most of the records in their entirety, which fails to meet both the fifth *Ishikawa* factor and the requirements of the PRA. See RCW 42.56.070(1), .210. The Court's order should also be limited in time.

The case law is clear that more is required for a court to justify withholding public records on the basis of protecting a defendant's fair trial rights. By applying the *Ishikawa* analysis, the Court may conclude that the Defendants have not met their burden of showing a "likelihood of jeopardy" to their fair trial rights, or that those rights can be protected through narrower means than categorical non-disclosure. In any event, the Court has "an affirmative duty to try to accommodate" the interests of both the defendants and the Times. *Ishikawa*, 97 Wn.2d at 45.

C. **RCW 42.56.540 is not a PRA exemption, and does not provide an independent basis for withholding public records.**

The only PRA provision relied on by the Court for withholding the records at issue is RCW 42.56.540. Order at 5, 7-21. This provision is not an exemption to disclosure, but rather is a procedural provision that sets out the standard for obtaining a PRA injunction. The Supreme Court has rejected the argument that RCW 42.56.540 is an independent basis for withholding records under the PRA. The provision (formerly RCW 42.17.330) "is simply an injunction statute. It is a procedural provision which allows a superior court to enjoin the release of specific public records *if they fall within specific exemptions found elsewhere in the Act.*" *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 257, 884 P.2d 592 (1994) (emphasis added). A third party seeking to enjoin release of a record thus must show *both* that a specific PRA exemption applies, and that the requirements of the statute are met — namely, that disclosure "would clearly not be in the public interest and would substantially and irreparably

damage any person, or... vital governmental functions." See *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 756-57, 174 P.3d 60 (2007); RCW 42.56.540.

The May 20 ruling is thus erroneous, because it finds records exempt under RCW 42.56.540, untethered to any specific PRA exemption.

D. The Order misconstrues the investigative records exemption.

The May 20 order discusses the PRA's investigative records exemption, RCW 42.56.240, but the Court finds it unnecessary to apply the exemption because it rests instead on "the exemption of RCW 42.56.540." Order at 5. As noted above, Section 540 is not an exemption. In the event the Court elects to revisit the investigative records exemption, the Times offers the following points and authorities, directed to errors of law in the Court's discussion of Section 240.

Police investigative reports are presumptively subject to disclosure under the PRA where, as here, they relate to incidents in which a defendant has already been identified. *Cowles*, 139 Wn.2d 472. Under *Cowles*, which is directly on point, the presumption that investigative records are disclosable can be overcome only if the Court determines that specific information in the records is "essential" to "effective law enforcement." RCW 42.56.240(1). Significantly, neither the Pierce County Prosecutor's Office, the PCSO, nor any other agency that participated in the investigation, has argued that disclosing the records at issue here would impede any law enforcement effort.

The May 20 order's discussion of the investigative records exemption does not mention *Cowles*. Instead, the Court relies on *Newman v. King County*, 133 Wn.2d 565, 947, P.2d 712 (1997). But *Newman* is simply inapplicable to cases, like this one, in which a defendant has been arrested and charged. As the Court observed, *Newman* involved an unsolved, 25-year-old killing in which no defendant had been identified, much less charged. The question of whether withholding records about the investigation was "essential to effective law enforcement" turned on whether any investigation into the cold-case homicide still existed. The Supreme Court held

1 that it did, based on evidence that investigators were still pursuing leads and that the case was
2 "leading toward an enforcement proceeding." *Id.* at 573.

3 The Supreme Court cabined *Newman* to its facts in *Cowles*, which articulates a different
4 standard for evaluating the PRA's investigative records exemption *after* "the suspect is arrested
5 and the case referred to the prosecutor." *Cowles*, 139 Wn.2d at 481. Significantly, *Cowles*
6 makes plain that police investigative records are presumptively disclosable *whenever* the
7 defendant has been charged:

8 [I]n *Newman*, we were concerned both with the difficulty police
9 would have segregating information in *unsolved cases*, and with
10 the propriety of charging courts with responsibility of determining
11 whether nondisclosure was critical to solving the case — a task
12 which we felt was better left to the professional judgment of the
13 police. *These same concerns are not present in a case, as here,*
14 *where the suspect has already been arrested and the matter*
15 *referred to the prosecutor* for a charging decision.

16 *Id.*, 477-78 (emphasis added). Where, as here, a defendant has been charged, the opponent of
17 disclosure bears the burden of establishing that nondisclosure is "essential for effective law
18 enforcement."

19 The Court suggests that the investigative records exemption may apply because
20 prosecutors have not yet decided whether to seek the death penalty against Darcus Allen. Order
21 at 5. But this fact is not sufficient to justify nondisclosure of any — much less all — of the
22 investigative records at issue. First, under *Cowles* and the plain language of Section 240, the
23 issue is not whether an "investigation is ongoing." The issue is whether nondisclosure is
24 "essential to effective law enforcement." The May 20 order does not state that releasing the
25 records would affect the prosecutor's ability to make the death penalty decision, and there is no
26 reason to believe that it would. Moreover, this reasoning could not possibly apply to records that
27 do not mention Allen, as the other defendants are not charged with death-penalty eligible crimes.
Finally, the fact that some aspect of a case is undecided does not justify categorically
withholding the documents under the investigation records exemption. Under the PRA,

1 disclosure need not wait until the judicial process has run its course. *See Cowles*, 139 Wn.2d at
2 479.

3 Accordingly, if the Court were to reevaluate the records under the investigative records
4 exemption, it should withhold only those portions of the records for which nondisclosure is
5 "essential to effective law enforcement." The remaining material is not exempt.

6 III. CONCLUSION

7 The Times objects to the May 20 order for the foregoing reasons, and respectfully asks
8 the Court to re-assess the records at issue and amend its order accordingly.

9 DATED this 28th day of May, 2010.

10
11 Davis Wright Tremaine LLP
12 Attorneys for The Seattle Times Company

13 By /s/ Sarah K Duran
14 Eric M. Stahl, WSBA #27619
15 Sarah K. Duran, WSBA #38954
16
17
18
19
20
21
22
23
24
25
26
27

1 CERTIFICATE OF SERVICE

2 I hereby certify that on May 28, 2010, I electronically filed the foregoing with the Clerk
3 of the Court using the LINX E-filing system and served via email a copy of THE SEATTLE
4 TIMES' OPPOSITION TO MEMORANDUM RE: OBJECTION TO PCSO DOCUMENTS
5 IDENTIFIED FOR RELEASE to the email addresses specified below:

6 Craig Adams at cadams@co.pierce.wa.us

7 Steve Penner at spenner@co.pierce.wa.us

8 Kevin McCann at kmccann@co.pierce.wa.us

9 John O'Melveny at jomelveny@harbornet.com

10 Phil Thornton at pthomtonatty@qwestoffice.net

11 Chip Mosley at chipmosley3@yahoo.com

12 Keith MacFie at dalymac@harbornet.com

13 Helen Whitener at whitenerh@wrwattorneys.com

14 Mary K. High at mhigh@co.pierce.wa.us

15 Thomas Miller at tom@christielawgroup.com

16 Kent Underwood at kent.underwood@kunderwoodlaw.com

17 William Michael Hanbey at hanbeyps@olywa.net

18 DATED this 28th day of May, 2010, at Seattle, Washington.

19 
20 Anita Griffin

EXHIBIT K

(Seattle Times Co. v. Sarko)

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

v.

EDDIE LEE DAVIS
DOUGLAS EDWARD DAVIS
RICKEY HINTON
QUIANA WILLIAMS
LATRECIA NELSON
LATANYAK, CLEMMONS
DARCUS ALLEN,

Defendant.

NO. 09-1-05374-1
09-1-05375-0
09-1-05340-6
09-1-05452-7
09-1-05453-5
09-1-05523-0
10-1-00938-0

REPLY TO REQUEST
RECONSIDERATION

INTRODUCTION

The materials should not be released for the reasons stated in the numerous briefs filed with the court, including Defendant Allen's brief including his Memorandum: Re Objection to PCSO Documents Identified For Release. First, the investigation is ongoing,

REPLY TO PRA REQUESTORS' MOTIONS FOR
RECONSIDERATION - 1

reply to Requestors motion for reconsideration of Berke Ruling.doc

DEPARTMENT OF ASSIGNED COUNSEL
949 MARKET STREET, SUITE 334
TACOMA, WASHINGTON 98402
(253) 798-6062 Facsimile 253-798-6715

1
2 second release of materials will impair the defendant's constitutional right to a fair trial by an
3 impartial jury.

4 **AUTHORITY**

5 This Court followed the procedure proscribed by the Public Records Act and
6 appropriately exercised its discretion. RCW 42.56.540 establishes the court procedures for
7 the protection of public records. The mechanics of the court's review are further addressed in
8 Cowles Publ'g Co. v. Spokane Police Department, 139 Wn. 2d 472, 478, 987 P.2d 620
9 (1999). Cowles holds that the court is "qualified to evaluate the potential affect of disclosure
10 on the trial process . . . "See also Limstrom, 136 Wn.2d at 615 (in camera review is the only
11 way a court can determine what portion of a document, if any, is exempt from disclosure.)
12 139 Wn.2d at 479-80; See also, State v. Jones, 96 Wn. App.369, 377, 979 P.2d 898 (1999)(in
13 camera review of confidential materials per a claim of RCW 5.60.060(5)).
14

15 The parties seeking release of public records apparently confuse closing the court
16 room and sealing court files with the issue before the court. In this case, the court room has
17 been open to all members of the media and no court files have been sealed. Thus, the
18 reliance on cases construing public and media access to court proceedings or documents filed
19 in court is misplaced. However, even in that situation the public's right and the defendant's
20 right to open and public court proceedings is not absolute. In some circumstances, other
21 rights take precedence and closure of the court room or sealing of documents is appropriate
22 and necessary
23
24
25
26

REPLY TO PRA REQUESTORS' MOTIONS FOR
RECONSIDERATION - 2

reply to Requestors motion for reconsideration of Serks Kulling.doc

DEPARTMENT OF ASSIGNED COUNSEL
949 MARKET STREET, SUITE 334
TACOMA, WASHINGTON 98402
(253) 798-6062 Facsimile 253-798-6715

1 The courts have repeatedly acknowledged that there are exceptions to the openness
2 requirement. . For example, General Rule (GR) 31 recognizes that privacy interests can
3 overcome public openness.
4

5 **Policy and Purpose.** It is the policy of the courts to facilitate access to court
6 records as provided by article I, section 10 of the Washington State Constitution.
7 **Access to court records is not absolute and shall be consistent with reasonable
8 expectations of personal privacy as provided by article 1, section 7 of the
9 Washington State Constitution and shall not unduly burden the business of the courts.
10 (emphasis added)**

11 GR 31(a), GR 31, entitled "Access to Court Records" establishes that personal privacy
12 interests may rise above any right or interest in open and public court rooms.
13

14 The presumption in favor of openness may be overcome by an
15 overriding interest based on findings that closure is essential to preserve
16 higher values and narrowly tailored to serve that interest. Thus, the
17 court may close a court room under certain circumstances.
18

19 Id. Likewise, in Seattle Times Co. v. Ishikawa, the court recognizing that other important
20 interests exist alongside openness in court proceedings the court stated,
21

22 [h]owever it is equally clear that the public's right of access is not
23 absolute, and may be limited to protect other interests.
24

25 Seattle Times Co v. Ishikawa, 97 Wn.2d 30, 37-39, 60 P.2d 716 (1982). "Openness is
26 presumptive but is not absolute. The public's right of access may be limited to protect other
27 significant and fundamental rights, such as a defendant's right to a fair trial." Dreiling v. Jain,
28 151 Wn.2d 900, 909, 93 P.3d 861 (2004). The current case presents such a situation.
29

30 Prior to sealing a document or closing a court room, in order to satisfy
31 constitutional requirements, the trial court must harmonize GR 15 with the standards
32

1 established in Seattle Times v. Ishikawa.¹ State v. Waldon, 148 Wn. App. 952, 957-958,
2 review denied, 166 Wn.2d 1026, 217 P.3d 338 (2009). The standards which must be
3 considered, now well known as the *Ishikawa* factors, have become the benchmark standard
4 for the proper procedure when a trial court is asked to seal a document or close a court room.
5

- 6
- 7 1. The proponent of closure and/or sealing must make some showing of the need
8 therefore. In demonstrating that need, the movant should state the interest or
9 rights which give rise to that need as specifically as possible without endangering
10 those interests ... if closure and/or sealing is sought to further any right or interest
11 besides the defendant's right to a fair trial, a serious and imminent threat to some
12 other important interest must be shown."...
 - 13 2. "Anyone present when the closure [and/or sealing] motion is made must be given
14 an opportunity to object to the [suggested restriction]." ...
 - 15 3. The court, the proponents and the objectors should carefully analyze whether the
16 requested method for curtailing access would be both the least restrictive means
17 available and effective in protecting the interests threatened
 - 18 4. "The court must weigh the competing interests of the defendant and the public",
19 and consider the alternative methods suggested
 - 20 5. "The order must be no broader in its application or duration than necessary to
21 serve its purpose..."

22 Ishikawa, 97 Wn.2d at 37-39.

23 In analyzing the first factor, that court stated that in order to justify closure or sealing
24 the moving party has the burden of establishing that the defendant's right to a fair trial is
25 threatened, or that there is a "serious and imminent threat to some other important interest."
26 Ishikawa 97 Wn.2d at 37. In the present case, the defendant has important interests at stake.
He has a constitutional and statutory right to due process which encompasses the right to a
fair trial by a fair tribunal and a statutory right to the non-disclosure of law enforcement
investigatory materials and a privacy interest in protected and privileged jail records,

¹ 97 Wash.2d 30, 640 P.2d 716 (1982)

1 medical, financial and mental health information. These rights are violated if the court makes
2 the law enforcement materials public.

3
4 Numerous cases have addressed the issue of court room closure, especially during
5 voir dire, or sealing of documents. See e.g.: State v. Strode, 167 Wn.2d 222, 217 P.3d 210
6 (2009) Presley v. Georgia, ___ U.S. , 130 S. Ct 721, ___ L. Ed.3d ___ (2010), a per curiam
7 opinion holding that under the First and Sixth Amendments, voir dire of prospective jurors
8 should be open to the public. Presley, 130 S. Ct. at 723-24. The Court explained that while
9 the accused has a right to insist that the voir dire of the jurors be public, there are exceptions
10 to this general rule. The right to an open trial “ ‘may give way in certain cases to other rights
11 or interests, such as the defendant's right to a fair trial or the government's interest in
12 inhibiting disclosure of sensitive information.’ ” Presley, 130 S. Ct. at 724 (quoting Waller,
13 467 U.S. at 45, 104 S.Ct. 2210). Similarly, for example, the Washington State Supreme
14 Court recently upheld the limited closure of the court room for jury selection in a case that
15 had garnered tremendous media attention in State v. Momah, 167 Wn.2d 140, 217 P.3d 121
16 (en banc 2009). The defendant, Dr. Momah, was a gynecologist accused of sexually
17 assaulting his patients as he performed physical examinations. He was charged with
18 numerous counts of rape and indecent liberties. The trial court permitted closure of a portion
19 of the jury selection process after giving careful consideration to the five *Ishikawa* factors.
20 The State Supreme Court found that the defendant's right to a fair trial trumped the right to
21 an open and public court room, and noted that the judge carefully weighed the competing
22 important interests before ordering closure. It further found that the trial judge had tailored
23
24
25
26

REPLY TO PRA REQUESTORS' MOTIONS FOR
RECONSIDERATION - 5

reply to Requestors motion for reconsideration of Berko killing.doc-

DEPARTMENT OF ASSIGNED COUNSEL
949 MARKET STREET, SUITE 334
TACOMA, WASHINGTON 98402
(253) 798-6062 Facsimile 253-798-6715

1 the closure narrowly to effectuate selection of a fair and impartial jury in order to protect the
2 defendant's right to a fair trial.

3 Many of the other cases that address court room closure or sealing of records deal
4 with the specific issue of whether the proper procedure was followed prior to closure or
5 sealing, rather than whether sealing is appropriate under the circumstances. In State v
6 Waldon,² the Court of Appeals reversed an order sealing a vacated conviction because the
7 trial court failed to apply the proper legal standard before sealing the vacated conviction. The
8 court did not address the ultimate question, whether sealing was proper, rather it remanded to
9 the trial court for further proceedings to apply the correct legal rule to the motion to seal. In
10 State v. Coleman³ the Court of Appeals held that the sealing of juror questionnaires in a rape
11 case was subject to a Bone-Club analysis (the same analysis as required by the *Ishikawa*
12 factors). In Coleman, the court reversed the case for reconsideration of the sealing issue
13 rather than reversal of a conviction. In State v. Bone-Club⁴, the Washington Supreme Court
14 reversed a conviction and remanded the case for a new trial where the trial court had
15 improperly closed a pre-trial suppression hearing without consideration of the *Ishikawa*
16 factors. In the recent case, In the Matter of the Detention of DFF,⁵ the Court of Appeals
17 found unconstitutional a court rule, MPR 1.3, that on its face made mental illness
18
19
20
21

22
23
24 ² State v. Waldon, 148 Wn.App 952, 202 P.3d 325 (Div. 1 2009), rev. denied, 166 Wn.2d 1026, 217
P.3d 339 (2009)

25 ³ State v. Coleman, --- Wn.App. ---, 214 P.3d 158 (2009)

26 ⁴ State v. Boneclub 128 Wn.2d 254, 906 P.3d 325 (1995)

REPLY TO PRA REQUESTORS' MOTIONS FOR
RECONSIDERATION - 6

reply to Requestors motion for reconsideration of Merko Rylling.doc-

DEPARTMENT OF ASSIGNED COUNSEL
949 MARKET STREET, SUITE 334
TACOMA, WASHINGTON 98402
(253) 798-6062 Facsimile 253-798-6715

1 commitment proceedings closed to the public unless the person who is the subject of the
2 proceedings or his attorney filed a request for a public hearing. The Court held that the rule
3 itself was unconstitutional because it did not allow the trial court to follow the proper
4 procedure for closing the court room.
5

6 Each of these cases make clear that sealing a court document or closing the court
7 room may be permissible when important rights are at stake, but the trial court must conduct
8 a careful analysis in each case of the competing rights, and follow the standard set out by GR
9 15 and Seattle Times Co. v. Ishikawa. However, in this case no defendant has requested
10 that the court room be closed or that court files be sealed and thus, the consideration of the
11 Ishikawa factors is, at best, tangential to the issue before the court.
12

13 Requestors also contend that the defendants have not made a showing that harm will
14 result from the release of records, however, as so aptly noted in Este v. Texas, 381 U.S. 532,
15 542- 543, 85 S.Ct. 1628,1632-33,14 L.Ed.2d 543 (1965), and recently relied upon in State v.
16 Jamie, ___ Wn.2d ___ (5/27 /2010) fn.4 (inherent prejudice standard does not require a
17 defendant to show that jurors “actually articulated a consciousness of guilt) by our State
18 Supreme Court, that in certain cases there is such a probability that prejudice will result that
19 is it is inherently lacking in due process. As held by the United States Supreme Court, “A
20 fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires
21 an absence of actual bias in the trial of cases. But our system of law has always endeavored
22 to prevent even the probability of unfairness. “ Estes, 381 U.S. at 543, citing Offutt v.
23
24
25

26 ⁵ In re the Matter of the Detention of D.F.F., 144 Wn.App. 214, 183 P.3d 302 (2008).

1 United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11. As has been observed many
2 times, death, as a punishment is different. When a defendant's life is at stake, the courts have
3 been particularly sensitive to insure that every safeguard is observed. Gregg v. Georgia, 428
4 U.S. 153, 187, 49 L. Ed. 2d 859, 96 S. Ct. 2909 (1976). State v. Frampton, 95 Wn.2d 469,
5 627 P.2d 922 (1981). Criminal statutes involving the death penalty must be construed in a
6 manner which is particularly sensitive to the protections afforded the defendant. The United
7 States Supreme Court has recognized that to safeguard the due process rights of an accused, a
8 trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial
9 publicity, and he may take protective measures even when they are not strictly and
10 inescapably necessary. Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 99 S. Ct. 2898, 61
11 L.ed.2d 608 (1979). The DePasquale Court directs a trial court to be "over cautious" in
12 ensuring that the defendant receive a fair trial. 99 S.Ct at 2905, n. 6.

13
14
15 Additionally this court has correctly read and applied case law construing the Public
16 Records Act. In Newman v. King County, 133 Wn.2d 565, 575,947 P.2d 712 (1997), our
17 State Supreme Court held that " RCW 42.17.310(1)(d)⁶ provides a broad categorical
18 exemption from disclosure all information contained in an open active police investigation
19 file." (Emphasis added.) Both Newman and the Cowles Publishing Company v. Spokane
20 Police Department case so relied upon by the requestors, support the Court's decision. In this
21 particular case the wholesale release of police investigative records would impair the trial
22 process, violate the constitutional rights of the defendant, and hinder an ongoing investigation
23
24

25
26 ⁶ Recodified at RCW 42.56.210.

1 by law enforcement. Although the Supreme Court held in Cowles Publishing Company v.
2 Spokane Police Department, 139 Wn.2d 472, 987 P.2d 620 (1999) that once an arrest has
3 been made police investigative records are presumptively available to the public, it also
4 clearly stated that presumption can be overcome in a specific case:
5

6 Although we agree with the Department that nondisclosure may, under
7 specific circumstances, still be necessary to protect pending enforcement
8 proceedings in an individual case,

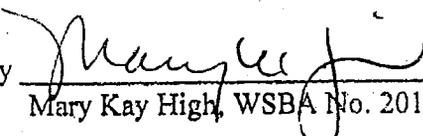
9 139 Wn.2d at 478-80.⁷

10 **CONCLUSION**

11 Because this Court appropriately interpreted and applied the controlling law,
12 Defendant Allen asks this court to deny the request for reconsideration.
13

14 Respectfully Submitted this 4th day of June, 2010.

15 DEPARTMENT OF ASSIGNED COUNSEL
16

17 By 
18 Mary Kay High, WSBA No. 20123
19
20
21
22
23
24

25 ⁷ Moreover, the irony of the requestors' claim that they should be afforded the release of documents
26 when the defense counsel is precluded from providing the very same materials to the accused further supports
the Court's decision in this case that release is not appropriate at this stage. CrR4.7(h).

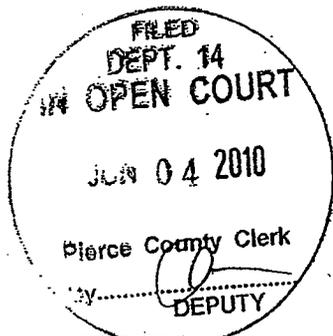
REPLY TO PRA REQUESTORS' MOTIONS FOR
RECONSIDERATION - 9

reply to Requestors motion for reconsideration of Sorke Ruling.doc-

DEPARTMENT OF ASSIGNED COUNSEL
949 MARKET STREET, SUITE 334
TACOMA, WASHINGTON 98402
(253) 798-6062 Facsimile 253-798-6715

EXHIBIT L

(Seattle Times Co. v. Sarko)



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DAVIS, EDDIE LEE,
DAVIS, DOUGLAS EDWARD
HINTON, RICKEY
WILLIAMS, QUIANA M.
NELSON, LATRECIA
CLEMMONS, LATANYA K.
ALLEN, DARCUS,

Defendants .

- No: 09-1-05374-1
- No: 09-1-05375-0
- No: 09-1-05430-6
- No: 09-1-05452-7
- No: 09-1-05453-5
- No: 09-1-05523-0
- No: 10-1-00938-0

ORDER DENYING RECONSIDERATION

THE COURT, having heard argument of counsel for
 objection to the court's order dated 20 May 2010,
 HEREBY
 DENIES THE MOTION FOR RECONSIDERATION.

DATED this 7 day of June, 2010.

Susan Serko
 JUDGE SUSAN K. SERKO

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

EXHIBIT M

(Seattle Times Co. v. Sarko)



10-1-00938-0 34453848 MT 06-10-10

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN - 9 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk.
BY _____ DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

EDDIE LEE DAVIS,

DOUGLAS EDWARD DAVIS,

RICKEY HINTON,

QULANA M. WILLIAMS,

LATRECIA NELSON,

DARCUS ALLEN,

Defendants.

NO. 09-1-05374-1
NO. 09-1-05375-0
NO. 09-1-05340-6
NO. 09-1-05452-7
NO. 09-1-05453-5
NO. 10-1-00938-0

**MOTION TO SEAL EXHIBITS
ADMITTED INTO EVIDENCE
IN THE STATE V. LATANYA
CLEMMONS, PIERCE COUNTY
CAUSE NO. 09-1-05523-0**

COMES NOW the Defendant, EDDIE DAVIS, and moves the court, ex parte, for an Order sealing those trial exhibits admitted as substantive evidence and as demonstrative evidence in the case of State v. Latanya Clemmons, Pierce County Cause #09-1-05523-0, until defense counsel have an opportunity to examine these exhibits, and if necessary, hold a hearing on this issue.

Defendant's Ex Parte Motion to Seal
Trial Exhibits - 1

D:\FILES\Current Files\DAVIS, EDDIE LEE (DAC- Rendering Crim Assst)\PLEADINGS\Ex Parte Motion to Seal Exhibits.wpd

JOHN P. O'MELVENY
Attorney at Law
15 No. Broadway, Suite A
Tacoma, WA 98403-3120
253.597.8979

COPY

1 THIS MOTION is based on the attached Declaration of John O'Melveny, upon the
2 attached Order to Seal, upon the attached Findings and Order Re: In Camera Review of PCSO
3 Documents, both signed by Judge Susan Serko on May 20, 2010, on Judge Serko's denial on
4 June 7, 2010 of the Requestor's Motion for Reconsideration, and upon the records and files
5 herein.

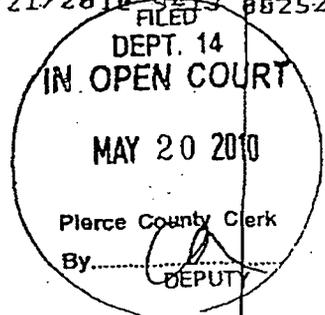
6 DATED this 9 day of June, 2010.

7
8 
9 _____
10 JOHN O'MELVENY, WSBA #9569
11 Attorney for Eddie Davis
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 Defendant's Ex Parte Motion to Seal
28 Trial Exhibits - 2

D:\FILES\Current Files\DAVIS, EDDIE LEE (DAC- Rendering Crim Assist)\PLEADINGS\Ex Parte Motion to Seal Exhibits.wpd

JOHN P. O'MELVENY
Attorney at Law
15 No. Broadway, Suite A
Tacoma, WA 98403-3120
253.597.8979



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

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DAVIS, EDDIE LEE,
DAVIS, DOUGLAS EDWARD
HINTON, RICKEY
WILLIAMS, QUIANA M.
NELSON, LATRECIA
CLEMMONS, LATANYA K.
ALLEN, DARCUS,

Defendants .

No: 09-1-05374-1
No: 09-1-05375-0
No: 09-1-05340-6
No: 09-1-05452-7
No: 09-1-05453-5
No: 09-1-05523-0
No: 10-1-00938-0

ORDER TO SEAL

THIS MATTER, having come before the above-entitled Court by the Court's own motion to seal the following documents and their attachments:

1. CD containing documents held by PCSO subject to potential disclosure (which shall be filed under *State v. Eddie Lee Davis, Cause No. 09-1-05374-1*)

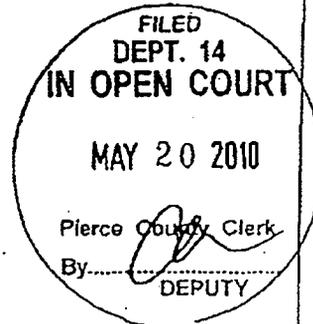
and the Court having read the files and records herein, and the Court finding that sealing is justified as identified in its Findings and Order re: *In Camera Review of PCSO Documents filed on May 20, 2010;*

Now, Therefore,

IT IS HEREBY ORDERED that the above referenced items be sealed in the court file and not be opened, except upon Order of the above-entitled Court. In the event of an application for the opening or copying of a sealed document listed above, notice shall be given to the parties or their counsel of record and a hearing shall be noted before the assigned department.

DATED this 20th day of May, 2010.

JUDGE SUSAN K. SERKO



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

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DAVIS, EDDIE LEE,
DAVIS, DOUGLAS EDWARD
HINTON, RICKEY
WILLIAMS, QUIANA M.
NELSON, LATRECIA
CLEMMONS, LATANYA K.
ALLEN, DARCUS,

Defendants.

No: 09-1-05374-1
No: 09-1-05375-0
No: 09-1-05340-6
No: 09-1-05452-7
No: 09-1-05453-5
No: 09-1-05523-0
No: 10-1-00938-0

FINDINGS AND ORDER RE: *IN CAMERA*
REVIEW OF PCSO DOCUMENTS

THIS MATTER having come on before the undersigned Judge for an *in camera* review of documents assembled by the Pierce County Sheriff's Office (PCSO); and the Court having made such review and considered the briefing of the parties and applicable statutes and case law; now, therefore, the Court makes the following findings and order:

PROCEDURAL HISTORY

Public records were requested from the PCSO by Robert J. Hill, American Economy Insurance Company, Christie Law Group, Michael Hanbey (attorney) and the Seattle Times. DPA/Legal Advisor Craig Adams memorialized the documents requested ("Summary of Public Records Requests 3/18/2010") and the responsive documents held ("Summary of Documents Held by Pierce County Sheriff's Department Subject to Disclosure 4/23/2010"). By order dated 4/7/2010, Judge Bryan Chushcoff ordered a stay of disclosure of records until 4/21/2010. On 4/23/2010, Judge Stephanie Arend extended Judge Chushcoff's order to 4/29/2010 for presentation of an order reflecting her oral ruling. On

1 4/29/2010, an order continuing the stay re: *in camera* review for documents under PRA was signed and
2 entered by the Court, appointing the undersigned to review the documents held by the PCSO *in camera*.
3 The 4/29 order also extended the stay, set a briefing and objection schedule and required the review to
4 be completed by May 20, 2010. On May 7, 2010, Judge Arend entered an order on motion for
5 reconsideration and for *in camera* review for documents under PRA.

6 Following the above, the undersigned was supplied with copies of all orders, briefs filed to date,
7 objections and other related miscellaneous pleadings, along with an original CD with index and
8 documents referenced in Mr. Adams' 4/23/2010 summary. Subsequent to 5/7/2010, the Court received
9 additional pleadings which included:

- 10 ▪ Memorandum re: Objection to PCSO Documents Identified for Release (filed by
11 Defendant Darcus Allen, 5/14/2010)
- 12 ▪ Objections to Disclosure (filed by Letrecia Nelson, 5/14/2010)
- 13 ▪ Notice of Joinder in Objections to PCSO Documents Identified for Release (filed by
14 Defendant Douglas Davis, 5/17/2010)
- 15 ▪ Seattle Times' Opposition to Memorandum re: Objection to PCSO Documents Identified
16 for Release (filed by Seattle Times, 5/18/2010)
- 17 ▪ Seattle Times' Objection to Douglas Davis' Notice of Joinder in Objections to PCSO
18 Documents Identified for Release (filed 5/18/2010)
- 19 ▪ Seattle Times' Response to Letrecia Nelson's Objections to Disclosure (filed 5/18/2010)

20 The Court is advised that the records requested by Robert J. Hill were previously determined
21 exempt by the PCSO. Apparently, Mr. Hill made no further attempt to object to the non-disclosure. The
22 records requested by Mr. Hill were not included in the indexed records and he has not appeared at any
23 of the hearings on this matter.

GENERAL TENETS OF THE PRA

24 Strong public policy is expressed by the Legislature for full and open disclosure regarding
25 government process. RCW 42.56.030. The burden falls on the objecting party to establish that an
exemption applies. *Progressive Animal Welfare Soc. v. UW*, 125 Wn.2d 243, 251, 257-258, 884 P.2d
592 (1994). The collecting agency (PCSO) summarized the records held as responsive to the requests
but, significantly, voiced no objection to disclosure. The Defendants in the above cases did object.

1
2 The PRA (Public Records Act) guarantees the public full access to
3 information concerning the workings of the government. [cite omitted]
4 The PRA preserves "the most central tenets of representative
5 government, namely, the sovereignty of the people and the
6 accountability to the people of public officials and institutions." [cite
7 omitted]

8 The PRA requires disclosure of all public records unless an exemption
9 applies. [cite omitted]. When a party seeks a public record, the
10 government agency carries the burden of proving that the record is
11 exempt from disclosure. [cite omitted]. Additionally, if redaction would
12 eliminate the need for an exemption, the PRA requires disclosure of the
13 redacted record. RCW 42.56.210(1).

14 *Koenig v. Thurston County*, ___ Wn. App. ___, ___ P.3d ___, 2010 WL 1309617, p. 7 of 24
15 (Wash. App. Div. 2, April 6, 2010).

16 With the foregoing public policy considerations and appellate direction in mind, the Court
17 reviewed documents, additional case law and concluded factually that the risk to Defendants' fair trial
18 rights of pretrial publicity, weighs in favor of non-disclosure for most of the documentation.

19 IN CAMERA REVIEW

20 The process of *in camera* review protects the investigative process, the privacy of an individual
21 and the Defendant's right to a fair trial. Multiple courts confirm the need for such a review by the trial
22 Court. *Cowles v. Spokane*, 139 Wn.2d 472, 479, 987 P.2d 620 (1999); *Limstrom v. Ladenburg*, 136
23 Wn.2d 595, 612, 963 P.2d 869 (1998). All parties agreed that such a review was necessary in this case
24 and this review followed.

25 STANDING

Defendants have standing to object to the release of the materials identified by the PCSO.
Having reviewed the documents, this Court finds that while many of the records do not specifically name
one or more of the Defendants, the records "pertain" to them as an overall extensive investigation
culminating in the charges filed against these seven Defendants.

///

///

///

1 **VIOLATION OF RPC'S AND/OR BENCH-BAR-PRESS GUIDELINES**

2 The Court finds that although the Rules of Professional Conduct (RPC's) and the Bench-Bar-
3 Press Guidelines suggest ethical obligations and considerations, they do not rise to the level of
4 mandatory directives in this context.

5 **RIGHT TO PRIVACY**

6 The findings and decision of the Court are based on the paramount concern for the Defendants'
7 fair trial rights (see discussion below). Although considered, the privacy rights of non-charged individuals
8 was not the Court's primary focus.

9 **WORK PRODUCT**

10 The work product privilege does not apply in this case because the documents are now in the
11 possession of the opposing party by virtue of the CD given to the undersigned and Defendants' counsel.
12 Insofar as the mental impressions of investigators, police officers and/or prosecutors are revealed in the
13 materials, the gathering agencies would have had standing to make this objection to production of the
14 information to the opposing party and chose not to do so. Therefore, the privilege is waived.

15 **EFFECTIVE LAW ENFORCEMENT EXEMPTION**
16 **(ONGOING INVESTIGATION)**

17 If a record is an investigative record compiled by law enforcement, its
18 nondisclosure must be "essential" to law enforcement or to protect a
19 person's right to privacy for that record to be exempt from disclosure
20 under RCW 42.56.240(1). Whether nondisclosure is essential to
21 effective law enforcement is an issue of fact. [cite omitted] The broad
22 language of this exemption, which the legislature has not defined,
23 clashes with the PRA's presumption and preference for disclosure. [cite
24 omitted] When an agency claims this exemption, the courts may
25 consider affidavits from those with direct knowledge of and responsibility
for the investigation. [cite omitted]

21 *Koenig v. Thurston County, supra*, 2010 WL 1309617, p. 10 of 24.

22 In *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997), the Court approved the two
23 step analysis for determination of the scope of the effective law enforcement exemption. First, the
24 documents must have been "compiled by law enforcement." Second, the Court evaluates whether the
25 document(s) is essential to effective law enforcement. *Newman v. King County, supra*, 133 Wn.2d at

1 573. There is no question that the documents in this case were compiled by law enforcement such that
2 *prong one is met. The second step is to determine whether the investigation is leading toward an*
3 *enforcement proceeding. The Newman Court cites approvingly to NLRB v. Robbins, 437 U.S. 214, 223-*
4 *224 (1978) for the proposition that the Court may feasibly make a "generic determination" about what is*
5 *essential for effective law enforcement." Id. The Newman Court then adopts the Federal Court's three*
6 *part inquiry from the objecting agency. Consideration should be given to:*

- 7 (1) Affidavits by people with direct knowledge of and responsibility for
8 the investigation . . . (2) whether resources are allocated to the
9 investigation; and (3) whether enforcement proceeding are [sic]
10 contemplated.

11 *Id.*

12 The differences between the *Newman* case and the instant matter are clear. *Newman* was a
13 cold, 25 year old case which had not yet been charged. The *Davis, et al.* cases are pending charges and
14 in fact one (Latonya Clemmons) is currently in trial. Although Defendants argue that the investigation is
15 ongoing, it would appear, absent further factual input from the charging agency, that the charging
16 decisions have been made and the investigation has concluded, that is, with one exception. The decision
17 whether to convert the case of Darcus Allen to a capital prosecution has not been made. Counsel for Mr.
18 Allen represents that this decision must be made on or before July 15, 2010. Therefore, as to that
19 charge, the investigation is ongoing.

20 The *Newman* analysis presumes the reviewing Court's need for the thoughts, impressions and
21 opinions of those involved in the ongoing investigation in order to make conclusions as to whether the
22 exemption of "effective law enforcement" applies. Since the compiling agency is not the objecting party
23 and has not (to this Court's knowledge) supplied any affidavits, opinions, reports or impressions regarding
24 the ongoing nature of this investigation, the record does not allow for a "generic determination" as
25 contemplated by the *Newman* Court. Rather, the Court must rely on the documents submitted, the
briefing of the parties and the law and the facts of the case(s). Because the Court relies on the
exemption in *RCW 42.56.540* and the reasoning below, the Court does not request further factual
explanation from the compiling agency.

ENDANGERING OF FAIR TRIAL RIGHTS

This Court has long recognized that adverse publicity can endanger the ability of a defendant to receive a fair trial. [cites omitted] To safeguard the due process rights of the accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity. [cites omitted] And because of the Constitution's pervasive concern for these due process rights, a trial judge may surely take protective measures even when they are not strictly and inescapably necessary.

Gannett Co. Inc. v. DePasquale, 443 U.S. 368, 378 (1979).

The above Court determined the open, public trial rights of the press in the context of a motion to suppress and whether the hearing should be closed to the public. *Gannett Co. Inc. v. DePasquale*, *supra*. Holding that the Defendant's right to a fair, impartial jury outweighed the media's right to be present, the Court stated:

There can be no blinking the fact that there is a strong societal interest in public trials. Openness in Court proceedings may improve the quality of testimony, induce unknown witnesses to come forward with relevant testimony, cause all trial participants to perform their duties more conscientiously, and generally give the public an opportunity to observe the judicial system. [cite omitted] But there is a strong societal interest in other constitutional guarantees extended to the accused as well. The public, for example, has a definite and concrete interest in seeing that justice is swiftly and fairly administered. [cite omitted] Similarly, the public has an interest in having a criminal case heard by a jury, an interest distinct from the defendant's interest in being tried by a jury of his peers. [cite omitted]

Gannett Co. Inc. v. DePasquale, *supra*.

The right to a public trial is a constitutional guarantee which belongs to the Defendant, not the general public. *Id.* At 381. Members of the public have no constitutional right to attend criminal trials. *Id.* at 391.

The facts of the *Gannett* case are analogous to the instant matter because Defendants urge this Court to restrict access to the PCSO documents based in part on each Defendant's right to a fair, impartial jury uninfluenced by pretrial exposure to potential evidence. One of the requesting parties, the Seattle Times, argues that the objecting parties failed to submit evidence to support factually their position. The Seattle Times is correct; Defendants do not provide data, statistics, print or video stories to substantiate their position that pretrial publicity will jeopardize Defendants' right to a fair and impartial jury.

1 The Court takes judicial notice of the extraordinary level of local, state and national attention that
2 this story garnered for days and weeks following the November 29, 2009 event. By recognizing the
3 extensive coverage of these cases by the media, the Court does not suggest that a fair and impartial jury
4 and proceeding cannot occur in Pierce County; however, further release of investigative materials and
5 details may jeopardize that right which in turn justifies exemption under the PRA.

6 **DOCUMENTS REVIEWED**

7 The Court reviewed the following documents which were provided by CD and indexed as follows
(the number in parentheses represents the number of subsections under each heading):

8 "Files Currently on the Disc (12)"

- 9
- 10 • ATF Reports (2)
 - 11 • Interviews and Statements (27)
 - 12 • King County Housing Authority
 - 13 • King County Sheriff (47)
 - 14 • PCSD Case Reports (154)
 - 15 • Related PCSD Case Reports (9)
 - 16 • Seattle Police Department (12)
 - 17 • Tacoma Police Department (8)
 - 18 • Washington State Fusion Center
 - 19 • Case Summary – Time Line
 - 20 • Major Incident Log
 - 21 • Photo Lineups

22 Based on the above legal analysis and the Court's review of the documents produced, the Court
23 hereby finds that the documents are producible or exempt for the reasons noted below.

- 24
- 25 1. ATF Reports
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
 2. Witness/Suspect Statements (Including Tacoma Police Department Officer Notes)
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
 3. King County Housing Authority & Financial/Protected Housing Documents
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
 4. King County Sheriff
Event log – *Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540*

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

Vehicle Impound – *Exempt – Endangers the fair trial rights of the Defendant(s).*
RCW 42.56.540

Officer Reports – *Exempt – Endangers the fair trial rights of the Defendant(s).*
RCW 42.56.540

5. Related Pierce County Sheriff Department

All records related to Martin Santo Lewis should be released within five (5) days of 5/28/2010, unless further objection is received.

09-333-743-1 pdf

Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540

09-131-011-2 pdf

Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540

09-131-0111-3 pdf

Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540

09-131-0111-4 pdf

Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540

09-131-0111-5 pdf

Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540

09-333-0743-1 pdf

Not exempt - shall be produced by PCSO within five (5) days of 5/28/10, unless further objection is received.

09-333-0743-2 pdf

Not exempt - shall be produced by PCSO within five (5) days of 5/28/10, unless further objection is received.

09-334-0023 FIR.pdf

Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540

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

09-355-0721 FIR.pdf

*Exempt – Endangers the fair trial rights of the Defendant(s).
RCW 42.56.540*

6. Washington State Fusion Center Intelligence Reports

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

7. Seattle Police Department Reports

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

8. Major Incident Log

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

9. Tacoma Police Department Files

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

10. Tacoma Police Department Forensics Reports

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

11. Pierce County Sheriff Department Incident Reports

Att Summary Sheet 2-9-10.pdf

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Attachment Summary.pdf

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.1

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.2

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.3

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.4

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.5

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.6

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.7

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.8

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.9

Not exempt – shall be produced by PCSO within five (5) days of 5/28/10, unless further objection is received.

Incident No. 093330363.10

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.11

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.12

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.13

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.14

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.15

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.16

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.17

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.18

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.19

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.20

Not exempt - shall be produced by PCSO within five (5) days of 5/28/10, unless further objection is received.

Incident No. 093330363.21

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.22

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.23

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.24

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.25

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.26

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.27

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.28

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.29

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.30

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.31
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.32
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.33
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.34
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.35
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.36
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.37
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.38
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.39
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.40
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.41
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.42
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.43
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

- 1 Incident No. 093330363.44
- 2 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 3 Incident No. 093330363.45
- 4 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 5 Incident No. 093330363.46
- 6 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 7 Incident No. 093330363.47
- 8 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 9 Incident No. 093330363.48
- 10 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 11 Incident No. 093330363.49
- 12 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 13 Incident No. 093330363.50
- 14 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 15 Incident No. 093330363.51
- 16 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 17 Incident No. 093330363.52
- 18 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 19 Incident No. 093330363.53
- 20 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 21 Incident No. 093330363.54
- 22 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 23 Incident No. 093330363.55
- 24 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 25 Incident No. 093330363.56
- 26 Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
- 27 Incident No. 093330363.57

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

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.58

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.59

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.60

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.61

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.62

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.63

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.64

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.65

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.66

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.67

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.68

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.69

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.70

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.71

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.72

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.73

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.74

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.75

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.76

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.77

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.80

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.81

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.82

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.83

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.84

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.85

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.86
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.87
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.88
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.89
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.90
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.91
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.92
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.93
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.94
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.95
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.96
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.97
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.98
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.99

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.100

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.101

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.102

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.103

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.104

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.105

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.106

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.107

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.108

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.109

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.110

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.111

Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.112
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.113
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.114
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.115
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.116
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.117
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.118
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.119
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.120
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.121
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.122
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.123
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

Incident No. 093330363.124
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.125
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.126
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.127
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.128
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.129
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.130
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.131
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.132
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.133
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.134
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.135
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.136
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.137
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

Incident No. 093330363.138
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.139
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.140
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.141
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.142
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.143
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.144
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.145
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.146
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.147
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.148
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.149
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540
Incident No. 093330363.150
Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540

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

- Incident No. 093330363.151
- Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
- Incident No. 093330363.155
- Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
- Prop rep 09-333-0363-31.pdf
- Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
- Property Report.pdf
- Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
- 12. Case Summary
- Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
- 13. Major Incident Log
- Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
- 14. Photo Lineup
- Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

ORDER

Based on the foregoing analysis, review and findings, the Court hereby orders as follows:

1. The Court incorporates the subsection entitled "Documents Reviewed" above as though fully set forth herein and orders that the indexed documents are exempt from disclosure for the reasons noted with the exception(s) of:

Certain documents under the section "Related Pierce County Sheriff Department Cases" and specifically those which relate to Martin Santo Lewis (09-333-0743-1.pdf and 09-333-0743-2.pdf).

Pierce County Sheriff Department Incident reports: 093330363.9 and 093330363.20

The above documents shall be produced by PCSO within five (5) days of 5/28/2010, unless further objection is received.

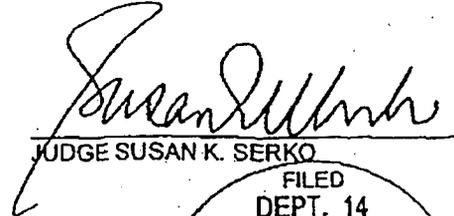
2. The parties shall have 6 court days from the date of this order to file written specific objection to this Court's decision and request an opportunity for oral argument. If no objection and/or request is made prior to the close of business (4:30 p.m.) on Friday, May 28, 2010, this order shall be

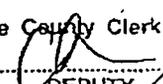
1 final and the non-exempt documents referenced under (1) above shall be released to the requesting
2 parties within five (5) days;

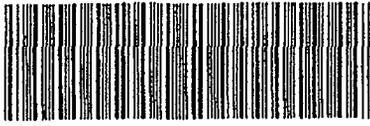
3 3. The Court's order signed by Judge Arend on May 7, 2010, staying disclosure by the
4 PCSO is hereby extended to May 28, 2010, to allow for further objection and/or request for argument; and

5 4. This order shall be subject to revision as soon as the last of the above captioned cases is
6 concluded.

7 DATED this 20th day of May, 2010.

8 
JUDGE SUSAN K. SERKO

9 FILED
10 DEPT. 14
11 IN OPEN COURT
12 MAY 20 2010
13 Pierce County Clerk
14 By  DEPUTY



10-1-00938-0 34453851 AFS 06-10-10

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN -9 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

EDDIE LEE DAVIS,
DOUGLAS EDWARD DAVIS,
RICKEY HINTON,
QUIANA M. WILLIAMS,
LATRECIA NELSON,
DARCUS ALLEN,

Defendants.

NO. 09-1-05374-1
NO. 09-1-05375-0
NO. 09-1-05340-6
NO. 09-1-05452-7
NO. 09-1-05453-5
NO. 10-1-00938-0

DECLARATION OF JOHN
O'MELVENY IN SUPPORT OF
MOTION TO SEAL EXHIBITS
ADMITTED INTO EVIDENCE
IN THE STATE V. LATANYA
CLEMMONS, PIERCE COUNTY
CAUSE NO. 09-1-05523-0

JOHN O'MELVENY states the following:

I am the attorney for defendant, EDDIE DAVIS.

Certain entities have requested records in the above entitled action pursuant to the Public Disclosure Act. On May 7, 2010, Judge Stephanie Arend, ordered that the requested documents should be reviewed in camera by a sitting Judicial Officer of Pierce County. That Judicial

DECLARATION OF JOHN O'MELVENY - 1

D:\FILES\Current Files\DAVIS, EDDIE LEE (DAC- Rendering Crim Assist)\PLEADINGS\Declaration of John O'Melveny.wpd

JOHN P. O'MELVENY
Attorney at Law
15 No. Broadway, Suite A
Tacoma, WA 98403-3120
253.397.8979

COPY

1 Officer was to determine if any of the requested documents were subject to exemption from
 2 disclosure under the Public Disclosure Act, or whether disclosure of these documents would
 3 impair the defendants' right to a fair trial.

4 On May 20, 2010 Judge Susan Serko filed both an Order To Seal and Findings and Order
 5 Re: In Camera Review of PCSO Documents. This allowed release of several documents to the
 6 Requestors, but found that the remainder of the documents were not subject to disclosure.

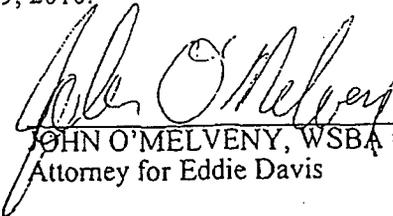
7 On June 7, 2010 the Requesting Parties brought a Motion For Reconsideration, and
 8 argument was made to Judge Serko. Judge Serko denied the Requesting Parties Motion For
 9 Reconsideration.

10 On May 17, 2010 trial began in State v. Latanya Clemmons, Pierce County Cause #09-1-
 11 05523-0. A number of exhibits were admitted as either illustrative evidence or substantive
 12 evidence. As of the writing of this Declaration there has not been a jury verdict.

13 Defendants are asking the court not to release any of the exhibits to the Requesting
 14 Parties, pursuant to Judge Serko's Order, until all defense counsel have an opportunity to review
 15 these exhibits. If defense counsel then object to the release of any of these exhibits, then a date
 16 shall be set, with notice to all parties, to argue whether any of these exhibits shall be released.

17 THE UNDERSIGNED hereby certifies under penalty of perjury under the laws of the
 18 State of Washington that the foregoing statement is true and correct, based on my own personal
 19 knowledge and belief.

20 SIGNED at Tacoma, Washington on June 9, 2010.

21
 22 
 23 JOHN O'MELVENY, WSBA #9569
 24 Attorney for Eddie Davis

25
 26
 27
 28 DECLARATION OF JOHN O'MELVENY - 2

D:\FILES\Current Files\DAVIS, EDDIE LEE (DAC- Rendering Crim Assist)\PLEADINGS\Declaration of John O'Melveny.wpd

JOHN P. O'MELVENY
 Attorney at Law
 15 No. Broadway, Suite A
 Tacoma, WA 98403-3120
 253.597.8979