

WASHINGTON APPELLATE PROJECT

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October 18, 2010

Chief Justice Barbara Madsen
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

BY RONALD K. STEPHENTER
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RE: Seattle Times v. Serko, 84691-0

Madame Chief Justice:

I am writing to clarify a factual point raised at oral argument in this matter.

In the course of oral argument Justice Alexander asked whether the trial court's findings mentioned or relied upon the investigative-records exemption as a basis for nondisclosure. Wash. Supreme Court oral argument, Seattle Times v Serko, 84691-0, (September 14, 2010), audio recording at 39'26", available at www.TVW.org (hereafter Argument). I erroneously agreed that the trial court's findings were silent on this point. Justice Fairhurst subsequently noted the order cited the exemption on page 7, but did not list it as an exemption for each and every record withheld. Argument at 40'56".

However, upon review of the transcripts of the June 7, 2010 hearing, it is clear that Judge Serko did specifically find the work product exemption applied. On page 38 of the verbatim report of that proceeding, Judge Serko notes "my reference to [RCW 42.56.]540 should also be reference to [RCW 42.56.]210 [sic]." As explained below, the refence to "210" was intended instead to reference the investigative-records exemption of RCW 42.56.240.

During the June 7, 2010, proceeding before Judge Serko, counsel for Mr. Allen, also inadvertently referenced "210" as the investigative-records exemption rather than RCW 42.56.240. 6/7/10 RP 28. The erroneous cite to RCW 42.56.210 rather than RCW 42.56.240, stems in part from Mr. Allen's briefing to the trial court on the newspaper's motion to reconsider as well as incomplete historical notes regarding the statues at issue. See Petition for Writ of Mandamus, Appendix K at 6 (discussing Newman v. King County, 133 Wn.2d 565, 947 P.2d 712 (1997), and noting former RCW 42.17.310(1)(d) was recodified as RCW 42.56.210).

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Newman of course concerned application of the investigative records exemption then codified in former RCW 42.17.310(1)(d). Former RCW 42.17.310 was subsequently recodified as RCW 42.56.210, and the investigative records exemption was specifically recodified as RCW 42.56.210(1)(d). Laws 2005, ch. 274 §103. As the Historical Notes to RCW 42.56.210 provide:

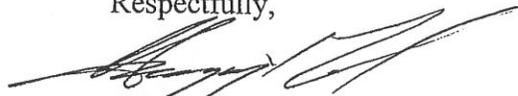
Former § 42.17.310 contained many of the exemptions from public inspection and copying. As part of the revision by Laws 2005, ch. 274, former § 42.17.310 was recodified as § 42.56.210 and rewritten. As rewritten, the section does not contain those exemptions, but exemptions are contained in §§ 42.56.230 to 42.56.480. Section 42.17.310 was also amended by Laws 2005 ch. 33, Laws 2005 ch. 172, Laws 2005, ch. 284, Laws 2005, ch. 312, Laws 2005, ch. 349, and Laws 2005, ch. 424, but these amendments were not reflected in the official credits upon revision and recodification as § 42.56.210.

Thus at the same time it was codified in RCW 42.56.210(1)(d), the investigative-records exemption was also codified in RCW 42.56.240, where it is presently found. Laws 2005, ch. 274, §404. It should be noted that the annotations of former RCW 42.17.310 presently available through Westlaw mention only the recodification as RCW 42.56.210.

Given the fact that relevant argument of parties' at the June 7, 2010, hearing, as well as the trial court's ruling, focused on the application of Newman, a case concerning only the investigative-records exemption, it is clear the court's reference to "210" is intended as a reference to the investigative records exemption in RCW 42.56.240. That is further bolstered but the fact that the RCW 42.56.210 has no application whatever to this case. Thus, in each instance in which the trial court cited RCW 42.56.540 as a basis for exemption from disclosure, the trial court intended to rely upon RCW 42.56.240 as well.

I appreciate the opportunity to clarify this point.

Respectfully,



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SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF OCTOBER, 2010.

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Rec. 10-18-10

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Subject: 846910-LETTER RE ORAL ARGUMENT

Seattle Times Co. v. The Honorable Susan Serko, et al
No. 84691-0

Please accept the attached documents for filing in the above-subject case:

LETTER TO THE COURT RE: ORAL ARGUMENT

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