

62937-9

62937-9 original

COA No. 62937-9-I

COURT OF APPEALS OF WASHINGTON  
FOR DIVISION ONE

ALLAN PARMELEE  
Appellant - Defendant - Counterclaim Plaintiff

vs.

KING COUNTY [JAIL]  
DEPARTMENT OF ADULT AND JUVINILE DETENTION  
Appellee - Plaintiff - Counterclaim Defendant

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COURT OF APPEALS DIVISION  
STATE OF WASHINGTON  
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AMENDED OPENING BRIEF OF APPELLANT

Appeal From The Superior Court Of King County

Honorable Palmer Robinson

No. 08-2-22252-7 SEA

Allan Parmelee  
pro se Appellant  
191 Constantine Way  
Aberdeen WA 98520

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**I - ASSIGNMENTS OF ERROR ON REVIEW:**

**A. Assignments of Error:**

1. Did the trial court error by denying Parmelee's CR-12(f) motion to strike opinions and scandalous matter about the records requestor when RCW 42.56.080 prohibits the identity of the records requestor from being considered and RCW 42.56.100 requires the fullest assistance to the records requestor by the agency?
2. Did the trial court error by blindly accepting the Agency's word for what the public records consisted of without an in-camera review per RCW 42.56.550(3)?
3. Did the trial court deny the records requestor due process by denying him any ability to conduct any discovery within the scope of CR-26(b) to probe and dispute facts and contentions alleged by the Agency?
4. Did the trial court error by concluding "all King County agencies were to be a party in the final order without being named under CR-8, CR-10 or CR-17 and CR-19, without any prior notice to Parmelee?"
5. Did the trial court error by agreeing that the requested records were exempt from disclosure under RCW 42.56.050, .230, .240 .420, and that "metadata" of electronic records are not "public records?"
6. Did the trial court error by issuing an injunction against Parmelee when the case was "dismissed?"
7. While this appeal was pending, did the trial court error by permitting King County to seek a second injunction in this case without leave of this court as required by RAP 7.2, triggering also a res judicatta and collateral estoppel bar, and without complying with King County Local Rule KCLR-7(b)(5) and with a single page motion that fails to comply with CR-5(e), CR-7 and KCLR-7(b)(5) by failing to file a Note-For-Motion and identify any law and facts, and by denying Parmelee all related CR-26(b) discovery?
8. Did the trial court error by failing to address Parmelee's contention that RCW 42.56.565 is facially and as-applied unconstitutional on First Amendment, overbreadth and vagueness grounds?

9. Did the trial court err by refusing to compel disclosure and related PRA penalties under RCW 42.56.550(4), and should Parmelee be awarded fees, costs and penalties on appeal?

**B. Issues Pertaining to Assignments of Error:**

1. The trial court contradicted itself when it permitted King County to present and rely of "trash-talk" about the records requestor when RCW 42.56.080 and .100 prohibit it, and denying Parmelee's CR-12(f) motion to strike. (Assignments 1, 3, 5 & 8).
2. The trial court erred when it denied Parmelee's motion for in-camera review per RCW 42.56.550(3) leaving the court with no way to sufficiently determine if the respective records are what King County claims they are, poses the risks alleged and if the claimed exemptions are properly applied. (Assignments 2, 7 & 8).
3. The trial court denied Parmelee due process when it denied Parmelee all CR-26(b) discovery necessary to oppose and probe the many factual allegations made by King County about Parmelee, their opinions of him, the respective records, and if and what real risks existed in the records' disclosure. (Assignments 3, 7 & 8).
4. The trial court erred by failing to require the Jail to name all related parties ending up in the final order under CR-8, CR-10, CR-17 & CR-19, without violating Parmelee's due process rights. (Assignments 4, 7 & 8).
5. The trial court erred by concluding that the requested public records were exempt under RCW 42.56.050, 230, .240 & .420, and concluding that others were not public records at all such as "metadata."
6. The trial court erred by denying the second injunction when both the first and the second indicated "the case is dismissed" per CR-52 and CR-54, leaving nothing to issue an injunction on. (Assignment 6).
7. The trial court erred by permitting the Jail to pursue the second injunction without obtaining leave of the Court of Appeals per RAP 7.2, and

without complying with CR-7 and King County Local Rule KCLR-7(b)(5). (Assignment 7).

8. The trial court erred when it failed to rule on Parmelee's response that RCW 42.56.565 is facially and as-applied unconstitutional on overbreadth, vagueness and First Amendment grounds. (Assignment 8).
9. The trial court erred by refusing to order the requested records released to Parmelee and in awarding PRA penalties and fees per RCW 42.56.550(4), he also seeks now on appeal. (Assignment 9).

## II - STATEMENT OF THE CASE:

Mr. Parmelee submitted Public Records Act \*1 requests relating to his own mistreatment, unprovoked assaults on him by King County Jail officials as widespread cover-ups and practices and policies of the Jail where prisoner abuses are commonplace and anyone seeking to oppose it are deemed "unfavorable" and again maliciously attacked like the Jail did to Parmelee in this case. CP-1206-14433.

Parmelee sought proof, the correct identity of, and related records to support the claims of mistreatment by the Jail to assure accuracy and reliability in journalistic reporting and litigation to avoid misidentification of persons and procedures involved. Id., CP-1030-1037 &

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\* Fn.1 The Public Records Act ("PRA") is codified at RCW 42.56, recodified in 2006 from RCW 42.17, herein the most recent versions are cited. Also see, WSBA's Public Records Act Deskbook: Washington's Public Disclosure and Open Meetings Laws (2006), (herein, "PRA Deskbook").

CP-1183-1205.

King County Dept. of Adult and Juvenile Detention ("Jail") filed the third suit against Parmelee on July 2, 2008, alleging a myriad of conclusory and sensational claims against Parmelee who dared to attempt to succeed in exercising any protected First Amendment rights should justify denying him any and all public records for any reason. CP-1-14. Parmelee filed an answer and affirmative defense contending among other things the Jail caused or contributed to any risks they claim existed and relied on to seek denial of public records to him. CP-15-21.

On July 4, 2008 and again on July 24, 2008, Parmelee served the Jail with CR-68 and ER-408 offers to withdraw all his PRA requests and waive any costs, fees and PRA penalties otherwise available per RCW 42.56.550(4), if the Jail would drop its lawsuit. CP-1173-1179, CP-1180-1182. The Jail later claimed Parmelee made PRA requests only and to unreasonably capitalize on the Agency's tendencies to prejudice against certain records requestors and refusals to properly respond in hopes of obtaining PRA penalties, despite his offers to settle. *Id.*, CP-1144, ¶4, CP-1145, ¶ 7. The Jail refused all Parmelee's offers to settle the cases. CP-1173-1179; CP-1180-1182; CP-10644.

On July 17, 2008, Parmelee filed a motion for an in-camera review per RCW 42.56.550(3) of all the records

at issue in this case to determine if the claimed exemptions were correctly applied, and if some documents could be released after partial redactions per RCW 42.56.210. CP-36-42. The Jail objected claiming the Court had no authority to conduct any such review. CP-96-98. Parmelee replied contending that the Jail misinterprets and distorts the motion and the PRA provision justifying the request. CP-1457-1461. Denying most of Parmelee's motion on December 4, 2008, contending the court had already pre-decided all the issues in the case, the trial court only asked to see a picture example in electronic format to determine if related "metadata" was disclosable. CP-1029. On December 30, 2008, the court held that even metadata was not a public record nor was it disclosable. CP-1049-1050. (also see exact same ruling in King County Sheriff's Office v. Parmelee, # 08-2-22251-9 SEA, COA # 62938-7-I, CP-1327 & CP-1328-1329 & Exhibit, also before this court on appeal presently).

On July 21, 2008, Parmelee filed a motion to consolidate this case with other pending cases on the same subject, involving essentially the same parties such as King County Sheriff's Office. Id. CP-22-25. The Jail agreed and joined Parmelee's motion. CP-99-100. On December 30, 2008, the trial court denied the motion. CP-1048, ¶ 7.

On July 17, 2008, Parmelee filed a motion per RCW 42.56.080 and CR-12(f) to strike the Jail's "trash-talk" about him because the accusations were inadmissible, immaterial and scandalous matter as well as insufficiently supported in both legal and factual terms. CP-26-35. The Jail responded contending that among other things, Parmelee's exercise of protected First Amendment rights should properly be relied on by an agency to oppose public records requests, and any "trash talk" about him, true or not, supported their case despite RCW 42.56.080 and .100 prohibiting such considerations. CP-90-95.

Parmelee replied contending that the PRA did not create a forum to allow trash-talking a records requestor or permit such sensationalism intended to inflame and distract the court from the real issues such as if and how a statutory exemption applied to specific identifiable records. CP-1462-1465. The trial court denied Parmelee's motion on December 30, 2008. CP-1038-1041, CP-1042, ¶ 23. Yet the trial court appeared to have contradicted itself by including these facts relied on in its factual findings as relevant, despite not being properly allowed to do so. CP-1046, ¶ 18, CP-1047, ¶ 4.

Faced with having to oppose the Jail's many alleged "trash talk" claims about Parmelee and purported threats

to governmental functions and persons, Parmelee submitted 13-interrogatories and 18-requests-to-produce per CR-26(b). Without conducting any of the required meet-and-confer requirements of CR-26(i), on November 17, 2008 the Jail filed a motion to quash all discovery. They contended that the court had already decided all the issues in the case, despite no final orders having been issued. CP-1025-1028, CP-1006-1020. No such orders disposing of the issues had been entered, until December 30, 2008 deciding the entire case. CP-1048, ¶ 8. Parmelee's response, CP-1021-1024, objected to the discovery suppression and the trial court admitted it had pre-decided the entire case on December 4, 2008, CP-1025-1028, despite no such orders having been entered. The trial court stated Parmelee had no right to probe the factual claims of the Jail in any way and the court would remain predisposed in favor of the Jail on all issues. Id.

On July 21, 2008, the Jail filed a voluminous 47-page motion seeking an injunction, CP-43-89, with an even larger pile of irrelevant and salacious declarations and exhibits. CP-1462-1465, CP-101-966, CP-867-887, CP-888-897, CP-898-904, CP-905-981. Parmelee contended in his CR-12(f) motion, most of it should have been stricken. CP-26-35.

Parmelee filed a response and cross motion for PRA

penalties with a supporting declaration \*2 contending among other things, the evidence presented failed to establish as relevant evidence real facts under the Rules of Evidence to support non-disclosure. CP-1183-1205, CP-1206-1443. The Jail filed their reply, CP-997-1002, and another declaration, CP-989-996, claiming the PRA requests were merely a big scheme for an unfair economic venture despite Parmelee's prior offers to settle the cases, and any inquiry into prisoner abuses was "harassment." CP-1173-1179, CP-1180-1182 and CP-1064-1065.

Based on the Jail's proposed order they presented to the trial court that was granted in its entirety, as-is, on December 30, 2009, raised 2-problems. CP-1038-1048, CP-1049-1050. Believing the order had been entered earlier, Parmelee filed a CR-59 motion to reconsider based on the Jail's [proposed] order and objections to that order. CP-1030-1037. The trial court never ruled on Parmelee's motion, rubber stamping anything the Jail presented. CP-1038-1048.

On January 28, 2009, Parmelee timely filed a notice-of-appeal. CP-1051-1063. RAP 5.1 - 5.4, RAP 6.1.

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\* Fn.2

The Superior Court docket repeatedly does not accurately reflect correct filing dates despite being mailed to the court and all parties for filing on the same dates, considered by the trial court.

The Court of Appeals accepted review per RAP 6.1 on January 28, 2009. CP-1051.

Without filing any CR-60(b) motion and despite "the case being dismissed," CP-1048, ¶ 8, the Jail filed a one-page motion seeking a second injunction in this case without leave of this court as required by RAP 7.2 - RAP 7.3. CP-1066. The motion failed to comply with King County Local Rule KCLR-7(b)(5)(B) and CR-8 by indicating what facts and law it relied on such as what resulted in the 14-page order. CP-1142-1155. The Jail also failed to file the required Note-For-Motion form required by KCLR-7(b)(5)(A). Parmelee sent the trial court a letter indicating objections and requested time and CR-26(b) discovery to respond. CP-1117-1120. It was denied on June 19, 2009, CP-1072, and the Jail's second injunction again granted as proposed. CP-1142-1155.

On June 19, 2009 the trial court conducted a hearing granting a preliminary injunction [despite a first injunction having been entered on December 30, 2009] and denying all Parmelee's requests for discovery and time to respond. CP-1067, CP-1068-1071 & CP-1072. In doing so, it denied Parmelee sufficient notice and due process. The Jail filed a supplemental declaration on June 22, 2009, CP-1073-1116, and Parmelee filed two declarations and a response to the Jail's motion. CP-1123-

1129, CP-1444-1456. The Court continued the second injunction on July 1, 2009, again denying Parmelee's request for CR-26(b) discovery and for time to access the case and evidence related filed in prison to present a defense. CP-1117-1120, CP-1123-1129, CP-1466-1468, CP-1130-1141. The trial court entered its second permanent injunction in this case on August 24, 2009. CP-1142-1155, CP-1156.

Again, Parmelee timely filed a supplemental appeal on September 23, 2009. CP-1157-1172.

### III - ARGUMENT:

#### A. Summary Judgment Standards Are Unique To PRA Cases.

Even in PRA cases, summary judgment is appropriate only when the pleadings, [admissible] evidence and affidavits, relevant interrogatories, depositions and material facts show that no genuine issues of material facts exist and the party is entitled to judgment as a matter of law. Havens v. C & D Plastics, Inc., 124 Wn.2d 158, 177, 876 P.2d 435 (1994). PRA cases are unique in that the Agency always bears the burden of proving that it did not violate the PRA and a statutory exemption applies to a specific public record. Yacobellis v. City of Bellingham, 55 Wn.App. 706, 711, 780 P.2d 272 (1989) rev. den., 114 Wn.2d 1002 (1990).

The standard of review by this court is de novo,

viewing all facts in light most favorable to the non-moving party (Parmelee). RCW 42.56.550(3); Williamson Inc. v. Calibre Homes Inc., 147 Wn.2d 394,398,54 P.3d 1186 (2002); Prison Legal News v. D.O.C., 154 Wn.2d 628,635-36, 115 P.3d 316 (2005). Courts must construe the PRA broadly favoring disclosure, and any properly applied exemptions narrowly. Id., RCW 42.56.030.

PRA cases are normally limited to issues of law and if a statutory exemption applies, regardless of who asks for the record and regardless of their alleged non-commercial purposes. RCW 42.56.080, .100 & .550(1) - (3). Koenig v. City of Des Moines, 158 Wn.2d 173,183,142 P.3d 162 (2006). Courts may not, however, look beyond the plain language of the statute if the plain language itself is unambiguous. State v. Armendarez, 160 Wn.2d 106, 110,156 P.3d 201 (2007). Only if and when a statute is determined to be ambiguous are other tools used to discern its intent and meaning, including statutory construction and legislative intent. Id. @ 110-111.

Only if the issue is comparable, as some are here, to the Federal Freedom of Information Act (FOIA, 5 U.S.C. § 552) may the courts look to federal court decisions for guidance. King County v. Sheehan, 114 Wn.App.325,337-338,57 P.3d 307 (2002).

1. True Or Not, A Records Requestor's [Disputed] Reputation, Race, Criminal, Political, Litigation History Or Reputation Is Not Relevant Per RCW 42.56.080 And Should Have Been Stricken Per CR-12(f).

Mr. Parmelee's records requests are governed by RCW 42.56.080 which prohibits an agency and court from considering matters about a records requestor or the non-commercial purposes of the requests. RCW 42.56.100 places an affirmative duty on an Agency to provide the "fullest assistance" to a records request. Meaning, the Jail's "trash talk" about who Parmelee is and what they or others think of him such as what his political, religious, sexual, criminal, journalistic, legal or ideological matters should be inadmissible, scandalous matter the court should have stricken per CR-12(f) as Parmelee requested. CP-26-35.

The controlling statutory language of RCW 42.56.080 is:

"Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person... Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request..."

Id., (emphasis added); WAC 44-14-04003(1)

The Agency also must exercise due diligence in affirmative act(s) that "shall provide the fullest assistance to inquirers and the most timely possible action on requests

for information." RCW 42.56.100 (emphasis added);  
WAC 44-14-020(3); WAC 44-14-040(1) & WAC 44-14-04003(2).  
DOE-I v. Washington State Patrol, 80 Wn.App.296,303-04,  
908 P.2d 914 (1996)(agency has affirmative duty to  
assist records requestor regardless who [s]he is.).

Not until 2009 did the Legislature enact the  
"Black-List Law" under RCW 42.56.565, despite the  
Washington Constitution, Article I, § 12 ("No law  
shall be passed granting any citizen, class of citizens,  
or corporation other than municipal, privileges or  
immunities which upon the same terms shall not equally  
belong to all citizens, or corporations.") prohibiting  
such discrimination. In any event, RCW 42.56.080  
still prevents the Jail from submitting their volumes  
of trash-talk about Parmelee and looking beyond the  
four corners of the public records to determine if they  
are exempt. CP-26-35, CP-1206, CP-1462-1465; Koenig v.  
City of Des Moines, 158 Wn.2d @ 183-184; NARA v. Favish,  
541 U.S. 157, 170-71 (2004)(under the FOIA, court cannot  
look beyond the records, and if a privacy waiver exists,  
to exempt public records from disclosure.) (also see,  
Appeal Grounds 7 & 8).

Additionally, ER-401 limits evidence relevancy. It  
must be determined by reference to applicable substantive  
law, which is very narrow in a PRA case. Sun Mountain

Prod. v. Pierre, 84 Wn.App. 608,929 P.2d 494 (1977).

Under ER-402, irrelevant evidence such as the Jail presented about Parmelee's character or reputation had no bearing on if a statutory PRA exemption applied per RCW 42.56.030, .070 and .550(1)-(3), and should have been stricken as inadmissible. Johnson v. Associate Oil, 170 Wash.634,17 P.2d 44 (1932)(similar contracts or other transactions are irrelevant); Lataille v. Ponte, 754 F.2d 33,37 (1st.Cir.1985)(prisoner's disciplinary record is not admissible in § 1983 case against prison guards under evidence rules 404 or 608(b)); Simpson v. Thomas, 528 F.3d 685 (9th Cir.2008)(similar).

Trash talk by the Jail about Parmelee is also excludable under ER-403. Carson v. Fine, 123 Wn.2d 206, 867 P.2d 610 (1994)(ER-403 must be administered evenhandedly). It is more prejudicial than probative and is only intended to sensationalize and inflame the case, while distracting the court into irrelevant issues. e.g., Kirk v. Washington State Univ., 109 Wn.2d 448,746 P.2d 285 (1987).

Because the PRA requires a case to focus only on an agency and specific PRA exemptions and if or how they apply, ER-404(b) does not allow a rear-view-mirror approach on the records requestor to allow for trash talk

in an effort to avoid disclosure. Dickerson v. Chadwell, Inc., 62 Wn.App.426,814 P.2d 687 (1991).

Furthermore, the Jail's trash talk about Parmelee fails CR-11(b)(2) & (3). Bryant v. Joseph Tree Inc., 119 Wn.2d 210,829 P.2d 1099 (1999). Parmelee could have hidden behind a lawyer to submit PRA requests and the attorney could not be compelled to identify his or her client the requests are being made for to avoid this very thing. Klevin v. City of Des Moines, 111 Wn.App.284, 291,44 P.3d 887 (2002).

CR-12(f) provides the remedy to clean up such cases striking and refocusing the issues to relevant facts gained by stripping away the scandalous trash talk, sensationalized rhetoric, impertinent and immaterial material the Jail flooded the case file with, Parmelee timely sought to strike. CP-26-35, CP-1462-1465. Such allegations, true or not, should have been stricken because RCW 42.56.080 prohibits consideration of who the requestor is, subjecting the Jail to CR-11(b) sanctions and CR-12(f). McNeal v. Allen, 95 Wn.2d 265, 267-68,621 P.2d 1285 (1980); Reed v. Streib, 65 Wn.2d 700, 399 P.2d 338 (1965).

The trial court abused its discretion by allowing the Jail's trash talk, filling the case with inflammatory accusations the trial court would not even allow Parmelee

discovery to probe for validity, leaving the case little more than a Circus act by the Jail's performance.

CP-1309-1316, CP-1317-1326.

**(i) Trash Talk Does Not Support Alleged Factual Conclusion Nor Does It Meet The Required Legal Standards.**

For example, the Jail claimed Parmelee's PRA requests were designed to "harass" the County without meeting any related statutory definition such as RCW 10.14.020.

First, RCW 42.56.030 permits Parmelee to make such requests and RCW 42.56.080 prohibits a rear-view-mirror examination of the records requestor in a PRA case. Because the PRA is a "lawful" matter and its purpose irrelevant, it cannot be alleged as harassment. Zink v. City of Mesa, 140 Wn.App.328,333,337-338,343-344, 166 P.3d 738 (2007)(citizen issued 172 PRA requests the County called harassing, the COA reversed because PRA is in itself a lawful exercise). King County v. Sheehan, 114 Wn.App.325,341,59 P.3d 307 (2002). CP-146, CP-1420, ¶ 9.

**2. The Trial Court Could Not Reliably Determine If PRA Exemptions Were Properly Applied By The Agency In Full Or Part Without An In-Camera Review Per RCW 42.56.550(3).**

Due process is trivialized when an agency is permitted to hide its records from judicial scrutiny and government transparency examinations required

by RCW 42.56.030 as the Jail was permitted to do here. Parmelee contested that the records at issue in this case were what the agency claimed they were, and that they posed any unreasonable risks they claimed and if portions were properly exempt, an in-camera review was required to determine this and if parts could be redacted and released in part per RCW 42.56.070(1) and .210, per RCW 42.56.550(3). CP-36-42, CP-96-98, CP-1457-1461, CP-1209 & CP-1049-1050 & related CD Exhibit designated.

WAC-44-14-08004(6); PRA Deskbook, Ch-16.2(5).

While the Jail was allowed to argue without support by producing any related records for in-camera review, they contended that various statutory exemptions applied despite prior holdings they did not apply in full or part, such as in Sheehan, 114 Wn.App. @ 342-49; Spokane Police Guild v. Liquor Control Bd, 112 Wn.2d 30,38,769 P.2d 283 (1989); Progressive Animal Welfare Soc'y v. University of Washington, (PAWS-II), 125 Wn.2d 243,270,884 P.2d 592 (1994) (records must be redacted if diclosable in part); Seattle Firefighters Union v. Holister, 48 Wn.App.129,737 P.2d 1302 (1987)(medical disability records subject to PRA disclosure). In-camera review was required to verify these claims.

In contrast, the Jail frequently and routinely exposed, traded and disclosed the very same information in various

forms, RCW 42.56.010(2) & (3), even by each person in their normal course of life and/or operations of government, revealed in full or part who government officials are, how they conduct themselves, their pictures and facial images, gender, race, [approximate] age and other information such as to enable them to be reliably identified and distinguished from another such as on letters, grievances, memos, by being present, signing and/or participating in the "normal course of [abusive] business involving the citizens of Washington and other matters." They claimed to reveal this same information through PRA requests violated their right to privacy per RCW 42.56.050, but failing to distinguish it from private non-government employee's privacy rights. PRA Deskbook, Ch.13.

Parmelee requested, the Jail refused to identify any "specific" identifiable record, that also fit within the exception of RCW 42.56.230, PRA Deskbook, Ch.11, that that could still be disclosed in full or part by redaction per RCW 42.56.070(1) and .210.

The case is plagued with secrecy where the Jail was permitted to make any claims they wished, and the trial court refused Parmelee's requests per RCW 42.56.550(3) to examine their claims in-camera. Courts are normally strongly urged to conduct in-camera reviews when asked

to do so. Spokane Research & Defense Fund v. City of Spokane, 95 Wn.App.568,577,983 P.2d 676 (1999)("the better practice is to...conduct an in-camera inspection. In-camera inspection enhances the trial court's ability to assess the nature of the documents, decide applicable exemptions, and perform necessary redaction.").

The record aptly illustrates why an in-camera inspection was necessary of all the records, because the court is without an means to determine the nature of documents and if exemptions apply in full or part.

**3. The Trial Court Denied Parmelee Due Process By Denying Him All Discovery And Time To Oppose Both Injunction Motions.**

Related to both injuntion motions brought by the Jail, CP-43-89, CP-1066-1072, Parmelee sought additional time to marshal facts with sufficient time to probe the many factual claims by the agency through discovery. It would have enabled Parmelee to narrow the many issues, refute and impeach most, and demonstrate that the many factual claims were not true, exaggerated and essentially a retaliatory attack for Parmelee's prior, present and future exercise of protected First Amendment rights. The Jail sought to suppress all such efforts and the trial judge agreed it had already pre-decided the case before any final orders had been entered, claiming discovery did not apply in PRA cases. CP-1002-1028, CP-1067-1072,

CP-1117-1129, CP-1466-1468, CP-1156.

Parmelee argued that the trial court lacked any jurisdiction to hear the Jail's motion to suppress all discovery because they had failed to attempt or even claim they had met and confirmed with Parmelee as required by CR-26(i). Absent such CR-26(i) compliance, the denial of discovery should be reversed on this ground as well. Clarke v. State Attorney General's Office, 133 Wn. App.767,138 P.3d 144 (2006).

Parmelee was denied due process when he was denied all discovery opportunities within the scope of CR-26(b). To ensure any process under the court's rules, codified at RCW 2.28.150, Abad v. Coza, 128 Wn.2d 575,588,911 P.2d 376 (1996), provides a litigant the process due under due process, requires a flexible approach to assure it is meaningful and adequate for the issues presented. Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

Parmelee should not have had to bear any initial burden, he sufficiently did if it was necessary, to establish some undefined standard to justify discovery. His discovery went to the facts alleged by the Jail, CP-1009-1024, and were well within the scope of CR-26(b). Every litigant should have equal access to the courts and an equal and fair opportunity to defend accusations made in the case. It is an abuse of discretion to

selectively allow one party the full panoply of court rules application, by deny Parmelee the same treatment, as was done here. Atchison, Topeka & Santa Fe Ry v. Hercules Inc, 146 Wn.3d 1071,1074 (9th Cir. 1998).

This case presented nothing but disputed facts about what the requested records consisted of, what real as opposed to imagined risks involved in producing them, and if and how the facts alleged by the Jail were true in full or part, even under CR-11(b) if made in good faith. Discovery under CR-26(b) would have revealed facts such as under ER-406, ER-608, ER-613 and ER-806, opposing the many salacious conclusory claims made by the Jail.

PRA cases frequently involve only a question of if a statutory exemption applies to specific public records and in-camera review per RCW 42.56.550(3) could easily resolve without discovery. This is not one of those cases. PRA Deskbook, Ch.16.2(4)-(5).

In Brouillet v. Cowles Publ'g, 114 Wn.2d 788,801, 791 P.2d 426 (1990), the Supreme Court noted that the agency could have conducted discovery to dispute the factual allegations of the records requestor, but failed to do so at their own peril. In Coalition on Gov't Spying v. King County, 59 Wn.App. 856,859, 801 P.2d 1009

(1990) the court noted that the records requestor conducted discovery. In Concerned Ratepayers Assoc'n v. Public Utility Dist., 138 Wn.2d 950, 956, 983 P.2d 635 (1999) the court notes a deposition was taken in the PRA case.

Because of the unusually high fact intensive case made by the Jail against Parmelee, he should have had the right to conduct discovery, and denying it was an abuse of discretion and denied Parmelee due process.

**4. When The Trial Court Said "This Case Is DISMISSED" It Terminated The Jail's Claims With Prejudice.**

On December 30, 2008, the trial court ruled that "This case is DISMISSED." CP-1048, ¶ 8 (emphasis in original). Parmelee had filed objections and a CR-59 motion to reconsider the dismissal. CP-1037, ¶ 16. Parmelee's motion and objections were never ruled upon, but are deemed denied by the trial court's failure to address it. The dismissal of the case, for CR-54 purposes, dismissed the Jail's claims and injunction against Parmelee, yet also denying his cross motion to compel and for PRA penalties. CP-1183-1443.

The dismissal of the case dismissed the Jail's claims in their entirety. CR-54; State ex rel. Lynch v. Pettijohn, 34 Wn.2d 437, 209 P.2d 320 (1949). Because the judgment was final for CR-58 purposes, disposing of all claims, it must be interpreted as to

ascertain its intention based on its unambiguous language. Callan v. Callan, 2 Wn.App.446, 468 P.2d 456 (1970). It is not as if Parmelee did not object to the dismissal in the proposed order submitted by the Jail, and by doing so, brought to the attention of the court the effect of the dismissal. As a result, res judicata and collateral estoppel bars any injunction, and even the Jail's second motion six months later. CP-1066.

Remand is required to determine PRA penalties and the quantity of records not produced, with an order that any exemptions and objections are barred by the dismissal the Jail proposed in their order the court granted. But also see, CP-1172, ¶ 7 ("This case is dismissed.")

**5. The Statutory Exemptions Were Wrongly Applied And Public Records Determined Non-Disclosable Were Incorrectly Construed Exempt And Withheld.**

The PRA specifies three times that courts must construe the PRA liberally in favor of disclosure. King County v. Sheehan, 114 Wn.App. @ 338. Virtually no other legislation repeats three times how it should be interpreted. PRA Deskbook, Ch. 2 thru 6. Courts should never ignore this thrice repeated statement:

"... The people insist on remaining informed so that they may maintain control over the instruments they have created. This chapter **shall be liberally construed** and its **exemptions narrowly construed** to promote this public policy and to assure that the public interest will be fully protected. In the event of any conflict between provision of this chapter and any other act, **the provisions of this**

chapter shall govern.

RCW 42.56.030 (emphasis added)(formerly RCW 42.17.251).  
Mr. Parmelee is a part of "the people" and the  
Washington Constitution, Article I, § 12, states that  
"Special Privileges And Immunities Prohibited: No law  
shall be passed granting any citizen, class of citizens,  
or corporation other than municipal, privileges or  
immunities which upon the same terms shall not equally  
belong to all citizens, or corporations." (emphasis added);  
RCW 42.56.080.

Accountability of government and transparency can  
only keep government honest, if even to unpopular or  
critical records requestors, full access is provided  
regardless of [non-commercial] motive. Id., Sheehan, 114  
Wn.App. @ 335-36. Caution must be exercised by courts  
that might frustrate the purpose of liberally promoting  
complete disclosure. Klevin v. City of DesMoines, 111  
Wn.App.284, 44 P.3d 887 (2002).

Parmelee asks this court to hold that the Jail's  
action was not promoted in "good faith" at all, contrary  
to their assertions, CP-1044, ¶ 28, but designed and  
organized to retaliate and harass Parmelee for daring to  
attempt to exercise protected First Amendment and state-  
created rights, with the intent to deter opinions,  
thoughts and ideas critical of the Jail. Yousoufian v.  
Office of Ron Sims, 165 Wn.2d 439m 200 P.3d 232 (recalled

and re-issued, slip Op. # 80081-2, 3/25/10)(factors to determine PRA penalties).

However unpopular or controversial a records requestor might be such as Parmelee, Prison Legal News, Tim Eyeman, ACLU, Green Peace, Washington Coalition for Open Government or other types of similar inquirers, these deserve the most judicial protection under the PRA. RCW 42.56.080; PRA Deskbook, Ch.4, pg.6, Commentary box.

(i) The Jail Fails To Meet The Burdens Of RCW 42.56.540 To Justify Enjoinment And Being RCW 7.40, RCW 7.24 And CR-65 Are Only General Rules, They Don't Apply.

The Jail's action with regards to RCW 7.40, RCW 7.24 and CR-65, should have failed because they are only general provisions, and more specific provisions under the PRA such as RCW 42.56.540 and 550(1) apply. RCW 42.56.030. PRA cases are not cases in equity per se, and the trial court erred by granting the relief it did under these provisions. CP-1044, ¶ 11. Also, the Jail failed to meet its burden under RCW 42.56.540 with real facts. In Re Rosire, 105 Wn.2d 606, 717 P.2d 1353 (1986).

Mere "concerns" as the Jail presented are not sufficient facts to meet their burdens of proof under the more specific statute, RCW 42.56.540. PRA Deskbook, Ch. 18; Soter v. Cowles Publ'g, 162 Wn.2d 716, 749 P.3d 60 (2007). e.g. CP-1042, ¶ 12.

The trial court's findings, CP-1038-1048, CP-1142-

1155, are also in dispute on appeal as they were in the trial court. The findings are conclusory, and lack sufficient real facts to support them in a non-conclusory way, necessary to support the harsh result of an injunction. Soter, 162 Wn.2d @ 756-57. Any claims by the Jail must be applied within the unambiguous terms of the PRA. Ockerman v. King County Dept. of Dev. & Envt'l Svcs., 102 Wn.App.212,216,6 P.3d 1214 (2000). The court must give a statutory term its plain meaning and assume that the legislature intended what it says, reading the statute as a whole, giving effect to all the language in the statute and harmonize all its provisions. Id. The court must not render other language, such as RCW 42.56.030 and .080, superfluous. PAWS-II, 125 Wn.2d @ 260.

Statutory construction of the PRA favors disclosure or Parmelee's requests. Sheehan, 114 Wn.App. @ 337.

Here, the trial court's order, CP-1308, does not find RCW 42.56.540 applies, but instead all the requested records are either exempt by another statute, or not public records at all. This in itself is flawed for many reasons. CP-1030-1037.

**(ii) The Court Erred By Concluding Records Maintained By Government, For Government, About Who And How Government Work, Are Not Public Records.**

Parmelee contends that pictures and other records he

sought about who in government, does what, to whom, and related metadata, that enables citizens and victims to reliably identify public officials, distinguish one from another such as with similar names or appearance, race, gender, age and similarly publically disclosed or revealed information, are public records, and subject to PRA disclosure. e.g., CP-1038-1048.

The same principals applied by this court in Sheehan held that names and similar information is disclosable records that contain information that discloses names of government officials, face (pictures), dates-of-birth, gender, race and age and similar information should be disclosable. Id., Koenig v. City of DesMoines, 158 Wn.2d at 183-184; Spokane Research & Defense Fund v. City of Spokane, 99 Wn.App.452, 994 P.2d 267 (2000)(job performance records are disclosable); Seattle Firefighters Union v. Hollister, 48 Wn.App. 129, 737 P.2d 1302 (1987) (medical disability records disclosable); Lindeman v. Kelso School Dist., 162 Wn.2d 196, 172 P.3d 329 (2007) (schoolbus video tape of children's altercation disclosable under PRA); Tacoma Public Library v. Woessner, 90 Wn.App.205, 951 P.2d 357 (1998)(pay information about public employees disclosable).

Furthermore, the trial court's ruling that "metadata" is not a public record, CP-1043, ¶ 19; CP-1045,

¶ 9, is not public record is contrary to this court's holding in O'Neill v. City of Shoreline, 145 Wn.App.913, 187 P.3d 822 (2008), rev. granted, argued March 2010, WWW.TVW.ORG (Supreme Court's oral argument about case). Metadata is data about data that reveals how, when, who and what an electronic record is made, and even reveals change history, equipment configurations, and even if the software used may be in violation of manufacturers' copyright rights and related laws. Id., PRA Deskbook, Ch.3.2, RCW 42.56.010(2); WAC 44-20-118.

The trial court incorrectly compared and found public policy urges non-disclosure, contrary to RCW 42.56.030. It held that RCW 46.20.118 (drivers' license negatives are exempt from disclosure normally, because they include pictures of private, and not limited to government employees) exempts disclosure of public governmental employee records, while contending that being able to readily identify government officials and distinguish one from another, would invade their right to privacy under RCW 42.56.050. It would assist in reducing confusion, misidentification with government, and smooth the process in service-of-process under RCW 4.28.080(15). It would reduce "John or Jane Doe" complaints as well as reducing misidentification of government employees by enabling critically relevant

information to be in the hands of those in most need of it.

The Legislature considered, and rejected, exempting public employee photographs in 2010 before the 61st session. HB-2259, HB-1253, HB-1255 & HB-2337. This was a failed attempt to modify RCW 42.56.250.

The trial court's holding that the PRA does not allow disclosure of public records that would enhance the ability to identify government employees, CP-1043, ¶ 21, is contrary to the PRA's intent. RCW 42.56.030. This reasoning was rejected in both Sheehan, supra, and Koenig v. City of DesMoines, 158 Wn.2d at 183.

Likewise, phone numbers should also be disclosable. Parmelee sought them to evaluate if excessive numbers existed, numbers provided that were unused or used excessively or for personal business purposes at government expense, and the regularly published internal phonebook was a disclosable public record. Even the numbers the court ordered disclosed, the Jail did not do, and/or did not do timely resulting in mandatory PRA penalties per RCW 42.56.550(4), remains unresolved. Soter, 162 Wn.2d at 756.

(iii) Exemption RCW 42.56.230 Does Not Apply Because None Of The Requested Information Is Kept Secret From Strangers AND/Or Is Not "Maintained" In Only Personnel Files.

When the trial court applied RCW 42.56.230, it failed

to correctly apply and interpret it in the whole PRA context. Redaction was not considered under RCW 42.56.070(1) and .210 were not considered, Parmelee asked for in his in-camera review motion. The Jail failed to establish their burden of proof under RCW 42.56.550(1)-(3). Dawson v. Daly, 120 Wn.2d 782,798,848 P.2d 995 (1993); Spokane Police Guild v. Liquor Control Bd., 112 Wn.2d 30, 36-38, 769 P.2d 283 (1989). Instead, the trial court gave the Jail an improper narrowing approach.

For example, in Clawson v. Longview Publ'g, 91 Wn.2d 408, 415-16, 589 P.2d 1223 (1979) the court explained that government employees, by the fact of accepting public employment, give up certain degrees of privacy non-government employed persons retain. Id, citing, Gertz . Robert Welch, Inc., 418 U.S.323,344-45 (1974). The trial court's interpretation and application of government employees' privacy rights is misplaced and contravenes RCW 42.56.050. PRA Deskbook, Ch. 11 & 13; Hearst v. Hoppe, 90 Wn.2d 123, 135-36, 580 P.2d 246 (1978); Sheehan, supra.

- (iv) Phone Numbers Are Not Exempt Per RCW 42.56.420 Because They Are Not Terrorist Prevention Critical Records, And The Necessary Criteria Was Not Met, While Disclosing The Same Infomation To Opponents And Strangers.

As discussed in sub-section (ii) above as applied to RCW 42.56.230 and phone numbers and the Jail's published phonebook, RCW 42.56.420 cannot apply because the

information does not meet the statutory criteria.

The statute requires that the information be a compromisable part of a terrorist response program, that if revealed, "consists of: specific vulnerability assessments... and records prepared for national security briefings not normally disclosable, targeting terrorist response tactics." RCW 42.56.420 It does not apply to phone numbers Parmelee requested. Northwest Gas Assoc'n v. Washington Utilities, 141 Wn.App.98, 168 P.3d 443 (2007). Being that the same information Parmelee sought is readily disclosed to employees family, opposing lawyers and their defense investigators, and on employees personal business cards, email response name blocks, letterhead and other Jail forms, without more, the non-disclosure violated the PRA and they should have been disclosed to Parmelee as requested.

**6. After Obtaining A Final Judgment Pending On Appeal, Without Leave Of This Court Per RAP 7.2, The Jail Filed An Insufficiently Pled One-Page Motion, Also Without Complying With CR-8 & KCLR-7(b)(5).**

For CR-54 purposes, as final judgment was entered on December 30, 2008, "[t]his case is dismissed." CP-1048, ¶ 8. Nelbro Packing Co. v. Baypack Fisheries, 101 Wn.App. 517, 523, 6 P.3d 22 (2000). Because Parmelee, not the Jail, filed a timely appeal per RAP 6.1, on January 28, 2009, CP-1051-1063, jurisdiction transferred to the Court of Appeals. Without leave of the Court of Appeals,

on June 18, 2009, the Jail "piled on" and filed a one-page motion for a second injunction. CP-1066. The motion does not identify any evidence relied on, any legal basis, nor was a Note-for-Motion filed, as required by King County Local Rule, KCLR-7(b)(5)(A) & (B) (a copy is attached hereto as Attachment-A). Because an appeal was pending, and leave of this court was required per RAP 7.2, the trial court's subsequent rulings should be stricken and declared void as if they had never occurred, including any effects of RCW 42.56.565(4). State v. J-R Distributers, 111 Wn.2d 764, 769, 765 P.2d 281 (1988); Tinsley v. Monson Sons Cattle, 2 Wn.App.675 191970).

The motion itself was insufficiently pled per KCLR-7(b)(5). It fails to provide "a succinct statement of the facts...", "a concise statement of the issue or law the court is asked to rule upon," any "evidence on which the motion is based must be specified with particularity, and any legal authority relied upon." It also fails CR-5(e) by failing to "file with the Clerk" in this case, evidence relied upon, not existing in the record compared to the resulting 14-page order. CP-1142-1155.

Parmelee objected, CP-1117-1120, CP-1123-1141, only to fall on deaf ears of the trial court.

The Jail's motion is further defective because they

never filed a CR-60 motion after the trial court had ruled "[t]his case is DISMISSED," CP-1048, ¶ 8, while failing to comply with CR-5(e), CR-7 and KCLR-7(b)(5), which should be fatal to their motion in its entirety. Doyle v. Planned Parenthood, 31 Wn.App.126, 639 P.2d 240 (1982); CR-7(b)(1); Lean v. Demopolis, 62 Wn.App. 173, 815 P.2d 269 (1991). Their failure to state with any particularity under CR-60(b), file a supporting declaration, and per CR-7(b)(1) the facts relied upon, should have been fatal to the motion. Davis v. Bendix, 82 Wn.App. 267, 917 P.2d 586 (1996).

The one-page motion hardly supported the draconian result of the second 14-page injunction order. CP-1066, CP-1142-1155. A party cannot rely on records in another case without filing them with the clerk per CR-5(e) and KCLR-7(b) in this case. Holland v. City of Tacoma, 90 Wn.App.533, 954 P.2d 290, rev.den., 136 Wn.2d 1015(1998).

In any event, because the trial court twice "dismissed" the Jail's case, CP-1048, ¶ 8, CP-1155, ¶ 7, based on the orders the Jail proposed to the court over Parmelee's objections, CP-1036-1037, ¶ 16, CP-1123-1129, CP-1466-1468, their claims should have been barred by the dismissals in their entirety and Parmelee awarded records, penalties, fees and costs per RCW 42.56.550(4). CR-54(e). Also, since it was the Jail who proposed the

dismissal order, the collateral estoppel and res judicatta effect barred their subsequent claims. Seattle-First Nat'l Bank v. Marshall, 16 Wn.App.503, 557 P.2d 352 (1976).

**7. This Case Should Have Been Consolidated With The Other King County Cases Per CR-19 And CR-42 To Avoid Collateral Estoppel, Res Judicatta And Standing Defects Barring This And Other Actions.**

Parmelee initially objected to the Jail's failure to join indispensable parties under CR-19. CP-20-21. He moved to consolidate, and the Jail agreed. CP-22-25, CP-99-100. However, in the Jail's proposed order Parmelee objected to, CP-1036, ¶ 15, they contradicted themselves, recommending consolidation be denied. CP-1062, ¶ 7. This created a res judicatta and collateral estoppel bar to this and other action. It was also an abuse of discretion to deny Parmelee's motion to consolidate. W.R.Grace & Co. v. State Dept. of Revenue, 137 Wn.2d 580,590,973 P.2d 1011 (1999).

Compounding the abuse of discretion and failing CR-8, CR-10, CR-17, CR-19 and/or CR-20 requirements to name all parties in the complaint, CP-1-14, by including in the caption, "...any agency, department, division, or emplyee of King County, specifically including but not limited of King County, specifically including but not limited to [the Jail]" (emphasis added), CP-1154, ¶ 4,

in the order, despite never being parties in the petition nor added or parties in the other case(s) the court denied consolidation required by CR-12(g), CR-16(a) and CR-42, triggering equitable estoppel and collateral estoppel. Triplett v. Dairyland Inc., 12 Wn.App. 912, 532 P.2d 1177 (1975); Rains v. State, 100 Wn.2d 660, 674 P.2d 165 (1983).

The inclusion of all broadly included King County agencies in the order, such as also in King County Sheriff's Office v. Parmelee, # 08-2-22251-9 SEA, COA # 62938-7-I and King County, et al, v. Parmelee, # 07-2-39332-3, Supreme Ct. # 83669-8, compounding the CR-8, CR-10 and CR-42 defects as well as the collateral estoppel flaws to the Jail's case as well as under CR-17, CR-19 & CR-20. Northwest Indep. Forest Mfrs. v. Dept. of Labor & Indust., 78 Wn.App. 707, 716, 899 P.2d 6 (1995).

Pyramidding and piling on case-after-case seeking the same relief involving the same parties and facts as the Jail has done with King County is collusion oriented harassment of a records requestor they stongly dislike and black-listed. The Jail should have no reasonable expectation to prevail.

**8. The Second Injunction Lacked Sufficient Admissable Evidence, Denied Parmelee Due Process And Relying On RCW 42.56.565 Was Both Facially And As-Applied Unconstitutional.**

The Jail's claims in the second injunction effort, presumably based on RCW 42.56.565 <sup>\*3</sup> lacked sufficient properly admissable evidence based on on real facts, and the statute is overly broad, vague and is unconstitutional on due process, First Amendment and equal protection grounds. CP-1066-1072, CP-1117-1129, CP-1466-1468, CP-1142-1155. Likewise, presumptively denying a litigent time and any ability to conduct discovery within the scope of CR-26(b) to probe contested issues complicated by the volume of factual claims madē by the Agency, also presumptively denies the records requestor due process under the state and federal constitutions. Furthermore, RCW 42.56.565 cannot be applied retroactively as it was here. Id.

(i) The Second Injunction Lacked Sufficient Admissable Non-Conclusory Evidence Necessary To Support Its Draconian Result

The Jail fails entirely to identify with any required particularity in their scanty one-page motion required by CR-7(b)(1) & (4) and KCLR-7(b)(5)(B), filed in the record per CR-5(e) what law and facts they rely on that justify the draconian 14-page result. CP-1066, CP-1142-

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\* Fn.3

The agency and the orders appear to cite to RCW 42.56.620. There is no such statute. Without waiving any objections to the error, Parmelee argues RCW 42.56.565, SSB-5130, Laws, 2009 Ch.10, was intended to be cited by the agency.

1155. Assuming arguendo that facts found were sufficiently existing in the record, they are neither relevant nor admissible, CP-1123-1468, and any after-the-fact untimely contentions, CP-1055-1361, CP-1073-1116, should have been disregarded by the court. Id.

An example of the Jail's abusive use of an injunction is in convincing the court that Parmelee's requests for records supporting denial by the jail guards did not spit in Parmelee's meals, CP-1148:8-9, ¶ 9; CP-1154:12-14, ¶ 3, or requests for Jail polices, not even made in a PRA request but claims to the court as one, CP-1148:11-13, ¶ 9, CP-1154:14-15, ¶ 3, amount to harassment and threats of Jail staff and their objectives. Id.

The Jail also fails to support any real facts that all or any jail [King County] staff "feel personally [unlawfully] threatened by Parmelee," CP-1148, ¶10, and if so, have an alternate remedy at law such as under RCW 9A.76.180 or RCW 10.14.020. Even lawful harassment or intimidation does not exist despite the many blind conclusory claims, to do so, could, but never has if really true, resulted in criminal or anti-harassment actions available to them. Id. Merely being "offended," CP-1149, ¶ 18, or "concerned," CP-1148, ¶ 11, are not a legitimate basis to issue an injunction. RCW 42.56.030,

RCW 42.56.550(1)-(3); Zink v. City of Mesa, 140 Wn.App. at 337-338, 343-344; Sheehan, supra.

Other examples of the Jail's abusive injunction exists repeatedly such as claiming that Parmelee was going to "maligning or slandering" anyone, CP-1145, ¶ 8(b) & (d) without meeting any standard required by New York Times v. Sullivan, 376 U.S. 254, 283 (1964). Even if true, it's not the basis for a PRA injunction because tort remedies at law exist. Steel v. Queen City Broadcasting, 54 Wn.2d 402, 341 P.2d 499 (1959). Nor is exercising of First Amendment rights rights such as internet publication, Sheehan, supra, Sheehan v. Gregoire, 274 F.Supp.2d 1135 (W.D. 2009), or picketing, Gooding v. Wilson, 405 U.S. 518, 520-21 (1974), or obtaining court-room videos to obtain images of public employees, Wash. Const., Article I, § 12; Nixon v. Warner Communications Inc., 435 U.S. 589, 597 (1978).

Not all "threats" or "intimidation" such as the Jail claims, are unlawful nor can they be a basis for public records enjoiment. e.g., State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2004); R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992). "Only a free and unrestrained press [or records requests] can effectively expose deception in government." New York Times v. United States, 403 U.S. 713 (1971). Even if [unlawfully] threatening and

intimidating, an alternate remedy at law exists to deal with it, and a PRA injunction has no effect one way or another deterring such activities making the PRA injunction the wrong choice of law. e.g., Steel v. Queen City Broadcasting, supra; Tegland, Vol.15, Washington Practice: Civil Procedure, § 44.10 (2009), Tyler v. VanAlst, 9 Wn.App. 441, 512 P.2d 760 (1973).

Alleging Parmelee "submitted continuous streams of [PRA] requests to public agencies," CP-1146, ¶ 8(i), is neither accurate nor candidly representative, CP-1451, ¶ 15(i), he may never submit payment for, CP-1146, ¶ 8(i) & (j), is barred from consideration even if true, which it is also not, per RCW 42.56.120. Especially since Parmelee offered to withdraw all his PRA requests to avoid litigation the agency forced upon Parmelee to continue regardless. CP-1173-1182. WAC 44-14-07001(1). Similarly, the term applying an injunction bar because requests require an "extraordinary amount of time" making public records available is required by the PRA, Id., and is not established with any baseline establishing "extraordinary" by any expert evidence. ER-701, ER-702. Reese v. Stroh, 128 Wn.2d 300, 907 P.2d 282 (1995)(expert's opinion is inadmissible and lacked reasonable basis test); Daubert v. Merrel Dow Pharmaceuticals, 509 U.S. 579 (1993).

Like previous exaggerations by the Jail, finding that, unlike any other unidentifiable records requestor in comparison claims Parmelee "inundates agencies with [PRA] requests hoping ... [to] benefit financially," CP-1146, ¶ 8(k), is contrary to the record in this or any other case, CP-1451-1452, ¶ 8(k); CP-1173-1179. Zink v. City of Mesa, 140 Wn.App at 343-44.

The remaining portions of the order, CP-1142-1155, are in error and the court failed to properly consider and weigh Parmelee's evidence (e.g., CP-1183-1205, CP-1030-1037, CP-1206-1443, CP-1466-1468, CP-1444-1456, CP-1123-1129) and the court failed to explain why Parmelee's evidence was disregarded compared to the Jail's easily shown false claims about Parmelee. The result is contrary to the intent of the PRA, RCW 42.56.030 and .550, urging government transparency. Under ER-401 thru ER-404 and ER-602, the Jail's claims about Parmelee's prison infraction record, political, race, religion, gender, claimed criminal history or other reputation claims are irrelevant and should have been disregarded. e.g., Lataille v. Ponte, 754 F.2d 33, 37 (1st Cir.1985) (prisoner's infraction in § 1983 suit against prison guards); Simpson v. Thomas, 528 F.3d 685 (9th Cir. 2008) (similar); ER-609. The errors are too numerous to specifically address within the 50-pages permitted by

this court.

Claiming Parmelee's PRA requests: "were made to [unlawfully, distinguishable from lawfully] harass and intimidate," CP-1152, ¶ 10, ¶ 12; PRA "policies" are not meant to be served by any of his PRA requests, CP-1152, ¶ 11; enjoinder is needed "to protect ... officials from threats to their safety" as if a PRA injunction would have any effect one way or another, CP-1152, ¶ 13; to prevent use of records requested by Parmelee in [unidentifiable] "criminal activity," CP-1153, ¶ 14; "misuse of the PRA for financial gain" when Parmelee offered to settle the case for nothing the Jail refused, CP-1173-1182; to protect the laudable purposes of the PRA" without any discussion of analysis what it consists of, CP-1153, ¶ 16. These many claims are improper speculation, hearsay, and lacks any personal knowledge under ER-602, while Parmelee disputed all the Jail's claims, no experts provided any credible or admissible information supporting such absurd and salacious claims.

For example, even the Washington State Institute for Public Policy's New Risk Instrument For Offenders: Improves Classification Decisions (March 2009) (available online at WWW.WSIPP.WA.GOV) makes no reference to including PRA requests as promoting criminal recidivism.

Even the Dept. of Corrections allows PRA requests.

WAC 137-08, et seq; Burt v. D.O.C., \_\_\_ Wn.2d \_\_\_, \_\_\_ P.3d \_\_\_,  
# 80998-4, 2010 WL 1909570 (Wash.Sup.Ct. May 13, 2010).

Claiming the PRA requests promote crime is like  
claiming victims of government abuse are to blame for  
allowing it to occur.

Furthermore, records available to some, must be  
presumed it belongs to all and is of significant public  
interest. NARA v. Favish, 541 U.S. 157, 172-73 (2004);  
Los Angeles Police Dept. v. Finley, 528 U.S. 32, 45-45  
(1999). An injunction even in part because of  
Parmelee's [unpopular] views are contrary to those of  
the government and should never be a basis to selectively  
deny records requestors records. Id.; Koenig v. City of  
Des Moines, 158 Wn.2d at 183, 185-187.

(ii) The New PRA Statute RCW 42.56.565 Cannot Be  
Applied Retroactively Because It Strips  
Away Rights To Previous Transactions Without  
A Statutory Provision To Do So.

The Jail seeks to apply the new PRA statute,  
RCW 42.56.565, enacted on 3/20/2009, to PRA requests  
pre-dating the statute. It does not contain any  
retroactivity provision. Because all of Parmelee's PRA  
requests pre-dated the new statute's enactment and it  
strips away rights previously existing, creating new  
obligations to past completed transactions, it cannot be  
applied retroactively nor by penalty cancelation through

RCW 42.56.565(4). CP-1125.

The new statute affects prior substantive or vested rights of PRA records requestors. It invalidates a slew of PRA provisions such as RCW 42.56.030, .050, .070, .080, .100, .120, .210, .520, .540 and .550, even if the injunction is later determined by a higher court as having permitted the agency to harass the records requestor by rewarding them from PRA penalties at RCW 42.56.565(4). In other words, the agency profits from harassment oriented PRA injunctions to deter PRA request compliance expectations by records requestors of any kind. It does so through allowing denial of public records to "black-listed" or unpopular records requestors, "not limited to" the exercise of protected First Amendment rights. RCW 42.56.565(2). The new statute significantly impairs of a party previously possessed and creates or increases liability for past conduct and imposes new duties with respect to past and completed transactions.

As a result, the statute may only be applied prospectively. 1000 Virginia Limited Partnership v. Verteas, 158 Wn.2d 566, 146 P.3d 423 (2006); Mieback v. Colasurdu, 120 Wn.2d 170, 181 P.2d 1074 (1984); Landgraf v. USI Film Products, 511 U.S. 244 (1994).

This same principle of non-retroactivity was applied in Adrox v. Children's Orthopedic Hosp. & Med. Cntr.,

123 Wn.2d 15, 30, 864 P.2d 921 (1993) where a new statute created additional burdens on previous and completed prior transactions. They were forbidden in that case and similarly should be forbidden here.

(iii) RCW 42.56.565's Subjective Standard Of Proof By Allowing Speculation And Blind Accusations Constitute Proof By A Preponderance Of Evidence Standard Denies Due Process.

While RCW 42.56.565 states the "preponderance of evidence" is the standard, realistically it is not. By its own language, the statute permits speculation, hearsay, conjecture and blind accusations to constitute a prima facie case without even a right or expectation to conduct discovery needed to probe the veracity of the accusations by the agency against the records requestor, creating any "anything or nothing" evidentiary standard baseline. CP-1002-1028, CP-1067-1072, CP-1117-1120, CP-1123-1129, CP-1142-1156. It contradicts the very principals of due process under a preponderance of evidence illusory standard as well. ER-401-404, ER-602, ER-702, ER-802. Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).

The terms "may," "would likely" and "not limited to ... other requests, purpose, type, number..." of records requested permits such unlimited arbitrary broad subjective speculation without even having to be

qualified under any scientific, actuarial or legally definable criteria. It throws wide open the door for unpopular records requestors to be relentlessly and expensively harassed by agencies with a vendetta and endless deep pockets to oppress black-listed unpopular records requestors the statute economically penalizes for wrongfully entered injunctions reversed on appeal. It is contrary to public policy, civilized judicial standards and due process.

(iv) Equal Protection Is Violated By RCW 42.56.565 Because It Permits Selective Prosecution And Discriminatory Effects Among Similarly Situated Requestors Of All Types.

RCW 42.56.565 permits an agency to arbitrarily select an unpopular records requestor and deny him or her public records. All the agency has to do is accuse the person or organization of employing, being a friend or related to, or even a stockholder of a prisoner including but not limited to being a journalist, investigative reporter or attorney. It would bar records to local and national media sources such as Prison Legal News, Seattle Times, 60 Minutes or any publically traded organization the prisoner may own stock in, including the prisoner's doctor, couldn't get DOC records about his client. Even other prisoners are not similarly barred the same public records who have not criticized or been outspoken about a government agency or person not

yet on the agency's "black list."

The statute violates Parmelee's and others like his, as well as non-prisoners' or organizations', rights under the equal protection clause of the Washington State Constitution, Article I, § 12 and the United States Constitution, Amendment Fourteen. Johnson v. Calif. D.O.C., 543 U.S. 499 (2005); DeYoung v. Providence Medical Center, 136 Wn.2d 136, 960 P.2d 919 (1998); Seeley v. State, 132 Wn.2d 776, 791-92, 940 P.2d 604 (1997). CP-1125-1126, CP-1455, ¶ 18.

(v) RCW 42.56.565 Is Facially And As-Applied Unconstitutional On Overbreadth, Vagueness And First Amendment Grounds.

This court is also asked to declare RCW 42.56.565 both facially and as-applied unconstitutional on First Amendment, overbreadth and vagueness grounds. CP-1126-1129, e.g., CP-1145, ¶ 9(f)-(g) & ¶ 10(g).

The trial court permitted the agency to rely on numerous instances of protected First Amendment conduct such as journalistic, political and litigation activities relating to seeking redress of government to vindicate rights and inquire into government misconduct. Id. It also allowed the agency to rely on anything or nothing as well as gross speculation and conjecture without any baseline of identifiable criteria or limits on what can be relied upon. Id., also see, RCW 42.56.550(3).

While RCW 42.56.550(3) permits a records requestor to cause "inconvenience or embarrassment to public officials or other" along with RCW 42.56.030, .050, 070, .080, .100, .120, .210, .520 and .550 creates an inconsistent and selectively arbitrary standard for selected "black-listed" unpopular records requestors the agency doesn't like. It does not exclude "true threats" or other proscribable forms of speech or conduct within the First Amendment context. e.g. see, State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2004); Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). The statute fails to draw any distinction without impermissibly intruding on freedoms guaranteed by the First Amendment and the Fourteenth Amendment of the Constitution.

The new PRA statute, RCW 42.56.565 lacks any objective, as opposed to subjective, criteria, such as what amounts to "type[s] of records," "other requests," "may assist," "would likely," "not limited to..." "seeks a significant and burdensome number..." "the impact..." "would likely harm..." and "the deterrence of criminal activity..." and other provisions are undefineable terms. A reasonable person could not foresee that identifiable conduct including "harassment" or "threats" as applied in the statute would or could be interpreted in any way

to avoid the risks of an injunction. Id., Bartnicki v. Vopper, 535 U.S. 514, 527 (2001).

The statute further chills and deters publication, seeking of and inquiring into government misconduct such as who, what, how and when government does, serving no required state interest of the highest order. Sheehan v. Gregoire, 272 F.Supp.2d at 1143-1145, citing, Florida Star v. B.J.F., 491 U.S. 524, 533 (1989). Because the intent of the PRA of the PRA is to make government Records available, containing truthful information, it may not be denied absent a need to further a state interest of the highest order. Id., Bartnicki, 532 U.S. at 527; also see, Los Angeles Police Dept. v. United Reporting, 528 U.S. at 43-45.

The statute further acts as a content-based restriction on free speech. It permits types of records sought, not limited to topics of inquiry, and any other purpose the agency alleges, to be a basis to deny a records requestor public records. Blind claims about "impact" such as "cleaning up government abuses and corruption" may be a basis to deny records. The statute is therefore presumptively invalide. Sheehan v. Gregoire, 272 F.Supp.2d at 1146, citing, R.A.V. v. City of St. Paul, 505 U.S. at 382. Allowing an agency to deny records based on subjective disapproval of the records requestors' character, ideas, race, gender, religion, political

preferences or unlimited other criteria, is a content-based restriction of free speech.

The statute is not content-neutral because it is not justified without reference to protected free speech. Id. It limits revealing truthful information, learning truthful information and participating in idea exchanges involving government and its people without being limited to restricting only "true threats" it is not a content-neutral prohibition. Id.

The statute does not serve any compelling state interest because the state cannot claim any interest served by focusing on the intent of the speaker. Sheehan v. Gregoire, 272 F.Supp.2d at 1146-1147. This analysis overlaps that above, citing Florida Star, involving a requirement for a state interest of the highest order. No compelling state interest can exist when allowed to hinge solely or even in part on the subjective intent of a records requestor. Id. When any third party may freely accomplish the same result the statute selectively blocks Parmelee from doing, and arbitrarily selected others in any number of ways, it fails constitutional muster. Thought policing is not a compelling state interest recognized by the First Amendment. Id.

The statute is not readily susceptible to a narrowing construction, making it unconstitutionally overbroad. Its deterrent effect on legitimate expression is both

real and substantial. Sheehan v. Gregoire, 272 F.Supp.2d at 1147-1148, citing, Erzonoznik v. City of Jacksonville, 422 U.S. 205, 218 (1975); Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973). The court may not rescue a statute from a facial challenge by rewriting the statute with missing terms or words. Id., Reno v. ACLU, 521 U.S. 844, 884-85 (1997).

The statute is also void for vagueness because an ordinary person of common sense cannot sufficiently understand and comply without risks and sacrifices to public interests and the First Amendment. Sheehan v. Gregoire, 272 F.Supp.2d at 1148-49.

**9. Parmelee Should Be Awarded PRA Penalties, Fees And Costs Related To The Records And This Appeal.**

If having prevailed on anything in this appeal, Parmelee requests all fees, costs, expenses and PRA penalties per RCW 42.56.550(4) . Soter, 162 Wn.2d @ 757.

**V - CONCLUSION:**

For these reasons and the records, Mr. Parmelee respectfully requests this court to overturn all aspects of the lower courts decision, with the exception of dismissing all the Jail's claims, and declaring RCW 42.56.565 both facially and as-applied unconstitutional. He also seek an order for all PRA penalties for any record withheld, without exception, and fees and costs. Respectfully submitted on July 6, 2010.

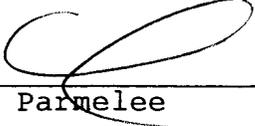
  
Allan Parmelee,  
pro se appellant

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CERTIFICATE OF SERVICE

I, hereby certify that in accordance with RAP 18.5 and DOC practice and policy, a copy of this pleadings was served on the court and all required parties VIA U.S. Mail, on or before the date below.

Signed at Aberdeen WA on 7 / 7 / 10.

  
\_\_\_\_\_  
Allan Parmelee

# Attachment A

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LCR 7. CIVIL MOTIONS

(b) Motions and Other Documents.

(1) Scope of Rules. Except when specifically provided in another rule, this rule governs all motions in civil cases. See, for example, LCR26, LCR 40, LCR 56, and the LFLR's.

(2) Hearing Times and Places. Hearing times and places will also be available from the Clerk's Office/Department of Judicial Administration (E609 King County Courthouse, Seattle, WA 98104 or 401 Fourth Avenue North, Room 2C, Maleng Regional Justice Center, Kent WA 98032; or for Juvenile Court at 1211 East Alder, Room 307, Seattle, WA 98122) by telephone at (206) 296-9300 or by accessing http://www.kingcounty.gov/kcsc/. Schedules for all regular calendars (family law motions, ex parte, chief civil, etc.) will be available at the information desk in the King County Courthouse and the Court Administration Office in Room 2D of the Regional Justice Center.

(3) Argument. All non-dispositive motions and motions for orders of default and default judgment shall be ruled on without oral argument, except for the following:

- (A) Motions for revision of Commissioners' rulings;
- (B) Motions for temporary restraining orders and preliminary injunctions;
- (C) Family Law motions under LFLR 5;
- (D) Motions before Ex Parte Commissioners;
- (E) Motions for which the Court allows oral argument.

(4) Dates of Filing, Hearing and Consideration.

(A) Filing and Scheduling of Motion. The moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered. A motion must be scheduled by a party for hearing on a judicial day. For cases assigned to a judge, if the motion is set for oral argument on a non-judicial day, the moving party must reschedule it with the judge's staff; for motions without oral argument, the assigned judge will consider the motion on the next judicial day.

(B) Scheduling Oral Argument on Dispositive Motions. The time and date for hearing shall be scheduled in advance by contacting the staff of the hearing judge.

(C) Oral Argument Requested on All Other Motions. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" on the upper right hand corner of the first page of the motion or opposition.

(D) Opposing Documents. Any party opposing a motion shall file and serve the original responsive papers in opposition to a motion, serve copies on parties and deliver copies to the hearing judge via the judges' mailroom in the courthouse in which the judge is located, no later than 12:00 noon two court days before the date the motion is to be

considered.

(E) Reply. Any documents in strict reply shall be filed and served no later than 12:00 noon on the court day before the hearing.

(F) Working Copies. Working copies of the motion and all documents in support or opposition shall be delivered to the hearing judge no later than on the day they are to be served on all parties. The working copies shall be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the hearing judge and shall be delivered to the judges' mailroom in the courthouse in which the judge is located.

(G) Terms. Any material offered at a time later than required by this rule, and any reply material which is not in strict reply, will not be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise.

(H) Confirmation and Cancellation. Confirmation is not necessary, but if the motion is stricken, the parties shall immediately notify the opposing parties and notify the staff of the hearing judge.

(5) Form of Motion and Responsive Pleadings.

(A) Note for Motion. A Note for Motion shall be filed with the motion. The Note shall identify the moving party, the title of the motion, the name of the hearing judge, the trial date, the date for hearing, and the time of the hearing if it is a motion for which oral argument will be held. A Note for Motion form is available from the Clerk's Office.

(B) Form of Motion and of Responsive Pleadings. The motion shall be combined with the memorandum of authorities into a single document, and shall conform to the following format:

(i) Relief Requested. The specific relief the court is requested to grant or deny.

(ii) Statement of Facts. A succinct statement of the facts contended to be material.

(iii) Statement of Issues. A concise statement of the issue or issues of law upon which the Court is requested to rule.

(iv) Evidence Relied Upon. The evidence on which the motion or opposition is based must be specified with particularity. Deposition testimony, discovery pleadings, and documentary evidence relied upon must be quoted verbatim or a photocopy of relevant pages must be attached to an affidavit identifying the documents. Parties should highlight those parts upon which they place substantial reliance. Copies of cases shall not be attached to original pleadings. Responsive pleadings shall conform to this format.

(v) Authority. Any legal authority relied upon must be cited. Copies of all cited non-Washington authorities upon which parties place substantial reliance shall be provided to the hearing judge and to counsel or parties, but shall not be filed with the Clerk.

(vi) Page Limits. The initial motion and opposing memorandum shall not exceed 12 pages without authority of the court; reply memoranda shall not exceed five pages without the authority of the court.

(C) Form of Proposed Orders; Mailing Envelopes. The moving party and any party opposing the motion shall attach to their documents a proposed order. The original of each proposed order shall be delivered to the hearing judge but

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shall not be filed with the Clerk. For motions without oral argument, the moving party shall also provide the court with pre-addressed stamped envelopes addressed to each party/counsel.

(D) **Presentation by Mail.** Counsel may present agreed orders and ex parte orders based upon the record in the file, addressed either to the court or to the Clerk. When signed, the judge/commissioner will file such order with the Clerk. When rejected, the judge/commissioner may return the papers to the counsel. An addressed stamped envelope shall be provided for return of any conformed materials and/or rejected orders.

(6) **Motions to Reconsider.** See LCR 59.

(7) **Reopening Motions.** No party shall remake the same motion to a different judge without showing by affidavit what motion was previously made, when and to which judge, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judge.

(8) **Motions for Revision of a Commissioner's Order.** For all cases except juvenile and mental illness proceedings:

(A) A motion for revision of a commissioner's order shall be served and filed within 10 days of entry of the written order, as provided in RCW 2.24.050, along with a written notice of hearing that gives the other parties at least six days notice of the time, date and place of the hearing on the motion for revision. The motion shall identify the error claimed.

(B) A hearing on a motion for revision of a commissioner's order shall be scheduled within 21 days of entry of the commissioner's order, unless the assigned Judge or, for unassigned cases, the Chief Civil Judge, orders otherwise.

(i) For cases assigned to an individual Judge, the time and date for the hearing shall be scheduled in advance with the staff of the assigned Judge.

(ii) For cases not assigned to an individual Judge, the hearing shall be scheduled by the Chief Civil Department for Seattle case assignment area cases. For Kent case assignment area cases, the hearing shall be scheduled by the Maleng Regional Justice Center Chief Judge. For family law cases involving children the hearing shall be scheduled by the Chief Unified Family Court Judge.

(iii) All motions for revision of a commissioner's order shall be based on the written materials and evidence submitted to the commissioner, including documents and pleadings in the court file. The moving party shall provide the assigned judge a working copy of all materials submitted to the commissioner in support of and in opposition to the motion, as well as a copy of the electronic recording, if the motion before the commissioner was recorded. Oral arguments on motions to revise shall be limited to 10 minutes per side.

(iv) The commissioner's written order shall remain in effect pending the hearing on revision unless ordered otherwise by the assigned Judge, or, for unassigned cases, the Chief Judge.

(v) The party seeking revision shall, at least 5 days before the hearing, deliver to the judges' mailroom, for the assigned judge or Chief Judge, the motion, notice of hearing and copies of all documents submitted by all parties to the commissioner.

(vi) For cases in which a timely motion for

reconsideration of the commissioner's order has been filed, the time for filing a motion for revision of the commissioner's order shall commence on the date of the filing of the commissioner's written order of judgment on reconsideration.

(9) **Motion for Order to Show Cause.** Motions for Order to Show Cause may be heard in the ex parte department. For cases where the return on the order to show cause is before the hearing judge, the moving party shall obtain a date for such hearing from the staff of the assigned judge before appearing in the ex parte department.

(10) **Motion Shortening Time.**

(A) The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule.

(B) A motion for order shortening time may not be incorporated into any other pleading.

(C) As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

(D) Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the bailiff of the judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.

(E) Proposed agreed orders to shorten time: if the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

(F) The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

[Amended effective September 1, 1984; May 1, 1988; September 1, 1992; September 1, 1993; September 1, 1994, March 1, 1996; September 1, 1996; April 14, 1997; September 1, 1997; September 1, 1999; September 1, 2001; September 1, 2002; September 1, 2004; September 1, 2006; September 1, 2007; September 1, 2008.]

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