

APPENDIX A

FILED
KING COUNTY, WASHINGTON

JUL 26 2012

SEA
SUPERIOR COURT CLERK

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

<u>IN RE KING COUNTY SEARCH WARRANTS</u>	
12-559	NO. 12-2-12055-2 <input checked="" type="checkbox"/> SEA NO. 12-2-12056-1 <input type="checkbox"/> KNT

AFFIDAVIT FOR SEARCH WARRANT (AF) is attached.

SEARCH WARRANT (SRW) is attached.

INVENTORY AND RETURN OF SEARCH WARRANT
(RTSW) is attached.

Affidavit for Search Warrant (continued)

appearances to conform to the uniform associated with the "black bloc". Many of the individuals were observed changing into all-black or primarily black clothing. A black bloc is a tactic for protest marches whereby individuals wear black clothing, scarves, motorcycle helmets, or other face concealing items. The clothing is used to conceal marchers' identities, allowing them to appear as one large unified mass and promote solidarity. Tactics of a black bloc can include offensive measures such as fighting, vandalism, rioting, and demonstrating without a permit. Property destruction carried out by the black blocs tends to have symbolic significance; Common targets include but are not limited to banks, institutional buildings and outlets for multinational corporations.

Many of the black bloc protesters on 05-01-2012 had in their possession large sticks, some with flags (primary black or black and red) and some without, it was later determined some of the sticks had screws placed at the base. Having the screws placed in the ends allowed for a focalized energy, that when smashed against windows caused them to break easily. Most of the sticks were solid wood at least one inch thick and approximately three feet long. The use of these weapons were observed during the property destruction that later occurred at Nike Town and other downtown businesses. After a large number of individuals within the group changed into the black bloc uniform they marched from Westlake Park into the downtown business district. Within the group there were several known anarchist from both the Seattle area and Portland Oregon. These subjects were observed and identified by plain clothes officers monitoring the crowd. There were also a large number of nonviolent "peaceful" protesters, intermingled within the group unaware of the anarchist's/violent protesters intent.

The group began by marching westbound on Pike St. this is a one-way street for eastbound traffic. They marched in the street blocking both vehicular and pedestrian traffic. The group turned southbound onto 3rd Ave, it was at that time the anarchist/violent protesters showed their capability of violence, ^{wf} A videographer from one of the local news stations was filming the group when he was attacked. One of the anarchist/violent protesters hit him in the face with one of the wooden dowels causing an injury to his face/head. The group then continued southbound on 3rd Avenue to Union Street at which time individuals from this group surround a vehicle that was forced to stop in the intersection. The anarchist/violent protesters actively terrorized the occupants of the vehicle by taunting the individuals inside by waving signs at them and preventing them from moving. Subjects were observed hitting and climbing on the vehicle. The group then continued southbound on 3rd Avenue turning eastbound on Seneca Street which is a one-way street westbound, again blocking vehicular traffic. Upon arriving at the northwest corner of 4th Avenue and Seneca St. the group stopped at the Wells Fargo bank branch and proceeded to break out ^{wf} several windows as well as throw paint projectiles at the building causing a significant amount of damage. ^{wf} A the total to repair the damage was approximately \$25,978.13. Inside of this location employees, in a terrified state activated their bank robbery alarms to identify the seriousness of the situation and to initiate an emergency response by police personnel. Officers were unable to respond to this specific incident in a timely and safe manner based on the group's actions. The group was taking up the entire street and actively deploying a "snake march" technique, this is a classic protester tactic to create a traffic jam that stretches out for several blocks in all directions to delay a police response. This unplanned protest march created a significant congestion problem throughout the downtown corridor and the level of violence created panic on the part of innocent citizens.

After causing extensive damage to the Wells Fargo bank, the group continued eastbound on Seneca Street to 5th Avenue, turning eastbound on Madison then northbound on 6th Ave. As the group marched random acts of violence and property destruction continued to take place. Vehicles legally parked along the route had their windows broken out and/or were spray-painted with the classic anarchist "A" symbol. The group continued towards 6th Avenue turning northbound marching towards the United States Courthouse located in the 1000 block of 6th Avenue. The group continued to march using the classic "snake" tactic entangling the downtown corridor and preventing normal traffic flow. Once the group arrived in the 1000 block of 6th Ave (Nakamura Federal Building) several subjects immediately began to damage the building. The damage at this location included but was not limited to the spray painting of street signs and the sidewalk with the anarchist "A" symbol, throwing paint projectiles, breaking windows and throwing

(continued next page)

Affidavit for Search Warrant (continued)

incendiary devices towards the doorways of the entrances off of 6th Avenue. (Damage caused to the Nakamura Federal Courthouse will be investigated by the Federal Bureau of Investigation).

The group proceeded northbound on 6th Avenue again randomly spray painting vehicles with the anarchist "A" symbol, breaking out windows and flattening tires. During the spree of violence anarchists/violent protesters were observed on video/photography by local media outlets and individuals, they were observed taking the large 3 to 4 foot wooden dowels they were carrying and smashing them into the windows of several businesses and numerous vehicles along this route causing untold property damage. Other weapons to achieve the devastation during this event were standard hammers, pry bars, window punches and sharpened wood sticks that came to a point that could seriously injure or kill an individual if struck with the proper force, prior events (news reporter injured) confirmed the anarchists/violent protesters were willing to use the items they were carrying to inflict bodily injury to others.

Once the group reached 6th Avenue and Pike St. individuals within the group stepped out from the crowd and threw rocks, paint projectiles and incendiary devices at the Nike store located in the 1500 block of 6th Ave. This activity led to more individuals within the anarchist group/violent protesters to begin a massive frenzy of destructive violence. Many of them used the wooden dowels with screws affixed to the base to cause damage. As this hostile and violent group made its way down 6th Avenue, homemade smoke bomb incendiary devices were thrown at businesses. Some of the incendiary devices landed near the doorways of the businesses creating a substantial risk of great bodily harm or even death to businesses owners, employees, customer's, nearby citizens, officers and other peaceful protesters. Officers were observed quickly addressing the incendiary devices with Cold Fire, a small hand held extinguisher, which prevented the activation of fire alarms and potential fires at these businesses as well as injury to others.

Additional officers responded to 6th Avenue and Pine Street in an effort to stop the focused intent of the anarchists/violent protesters in creating as much damage as possible to the businesses located along this route. The response was effective, with the protesters as a whole running northbound, taking the entire street. The mass ran north to Olive St. turning west, heading toward 5th Avenue. Along the way the protesters continued to wreak havoc creating property damage as the opportunity presented itself. Protesters were observed running along this route dropping their homemade weapons of destruction. Many of these weapons were later recovered as evidence. The protesters then ran southbound on 5th Avenue and back into Westlake Park. Along the way many who engaged in the black bloc tactic and committed crimes were actively changing out of their black-based uniforms and into a variety of standard street clothes as not to be recognized as a destructive force that had created an untold amount of property damage. The idea of wearing the uniform (similar black/dark clothing) is so every individual looks relatively alike, thus preventing the police from determining what individual committed the crime. For example if an a person commits property damage such as breaking the window of a business and runs into the Bloc, the suspect will easily blend in with everyone else. If a person wearing normal street clothes breaks the window and runs into the Bloc chances are they will be located by police either immediately or by being filmed or photographed committing the crime.

The group reconvened at Westlake Park after they changed back into standard street clothes. Upon their return the park was filled with peaceful protesters and Speeches and entertainment continued in the Park until approximately 1500 hrs, at which time the preplanned March to honor the dead and fight for the living proceeded to leave Westlake Park and headed northbound on 4th Avenue towards the Seattle Center with a final destination being the John T Williams Memorial totem pole. As this March proceeded to leave out of Westlake it became clear that a large group of anarchists/violent protesters were still amongst the peaceful protesters. It was made clear early on in this march that this group was ready and willing for confrontation. The main chant coming from the group appeared to be anti-police in nature. During this march officers were subjected to chants that included but were not limited to: "No justice no peace, fuck the police", and chanting over and over "Fuck the Police". In evaluating the crowd in the protest march it became evident that a number of the individuals who were still dressed in a fashion that would associate them with anarchist groups. They also had backpacks on that were heavily weighed and were

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Affidavit for Search Warrant (continued)

clearly pulling down on the shoulder straps. This created concern as we had knowledge that rocks, bottles and homemade paint projectiles were used in the earlier march. A number of protesters had large wooden dowels with the black and red flags associated with anarchy and the black bloc organizations.

A large number of police officers on mountain bikes were placed on both sides of the protest group, and by having officers on foot at the head and rear of the march we were able through presence to deter, limit and address any potential hostility directed at us or business by individuals within the protesting group in an immediate fashion. The protesters were escorted allowing them their freedom of speech to the Seattle Center a peaceful and controlled manner making the situation safer for all parties involved. The group then continued their march throughout the downtown core ultimately, congregating at 1st Avenue and Pike Street where the blatant disregard for life safety came into play. As the group was encouraged by officers to peacefully march back to Westlake Park a confrontation took place where numerous people failed to follow lawful orders and at one point an officer was struck in the face shield with a glass bottle (documented under Seattle Police Case # 12-133299).

Individuals within the group became very confrontational with the officers and again failed to follow lawful orders to disperse. Several Seattle Police Officers were assaulted by suspects throwing items and by being kicked and pushed by individual suspects within the crowd. As officers ordered individuals to leave the area and stay back from the arrest scenes, officers were confronted by physical force. This action resulted in several arrests but many of the suspects were able to retreat back into the crowd undetected after assaulting officers.

In the days following the violent protest, at the order of the Seattle Police Chief, a special task force known as the "May Day Task Force" was formed to identify individuals responsible for criminal activity related to the demonstrations on 05-01-2012. Task Force Detectives spent hundreds of hours combing over available video footage and photographs of the May Day Protests provided by various sources. The footage was reviewed for any criminal activity and once criminal activity was located the suspect was identified by his/her unique characteristics including clothing description. Each individual officer then reviewed their assigned footage for the described suspects along with any additional suspects or criminal activity. Based on this review several suspects were identified from the footage as being involved in criminal activity on 05-01-2012, the crimes included property damage, assault, and riot.

After reviewing the footage for criminal activity and identifying several subjects who were involved in criminal activity, images were captured and an SPD request for assistance bulletin was produced and distributed. On May 23, 2012 task force supervisors provided the Seattle Police Media Relations Unit with several images of persons identified as being involved in criminal activity. The Seattle Police Media Relations Unit released these photographs of the unknown suspects to various Seattle media outlets requesting the public's help in identifying the suspects as well as reporting any crimes associated with the May Day protest. This was achieved by establishing an email address and phone number specifically for the task force. By releasing the photographs to the public as well as the prior internal request to identify bulletin multiple individuals were identified.

During a review of footage for this event task force officers identified multiple assaults on officers. One of the suspects was identified as a Phillip Neel. The subject was identified using the following investigative techniques: During the review of video footage I located a, W/M wearing a red stocking cap, white and blue/purple flannel sleeveless shirt over a black jacket black pants and brown shoes assaulting an officer by kicking him in the knee.

The victim officer was identified as Officer Agate, a law enforcement officer who was performing his official duties at the time of the assault. Officer Agate described the kick as being very forceful. He ^{we} stated the type of kick was one that someone would do when trying to blow out a knee. While Officer Agate's attention was directed towards the hostile crowd to his left and the immediate threat of subjects throwing items, the subject used the crowd as concealment, approached Officer Agate ~~at~~ ^{and} kicked Officer

Affidavit for Search Warrant (continued)

Agate's right knee very forcefully intending to cause significant injury. After striking Officer Agate in the knee, the subject retreated back into the crowd and is seen removing pieces of his clothing in an attempt to alter his identity. Officer Agate stated the assault caused pain for several minutes to his knee but he was able to recover without seeking medical attention. See appendix A for reference images.

At the time of the assault the subject was attempting to conceal his identity by wearing a bandana over his face and a pair of goggles. After locating the criminal activity involving the subject, additional footage as well as footage that had already been reviewed was examined for a subject matching the description without his face concealed. After reviewing several hours of still images and video I located an image of the subject without his face concealed inside Westlake Park prior to the honor the dead and fight for the living march. The subject was wearing the red stocking hat, and a blue/purple sleeveless flannel shirt. Knowing Detective Hall was very familiar with a large number of anarchists and subjects who had been arrested during previous demonstrations, I asked him to examine the photograph. Detective Hall looked at the photograph and immediately recognized the subject as Phillip A Neel 10/04/1988. There are multiple images of Neel throughout the day's events on 05-01-2012 attempting to change/alter his identity by using different variations of his clothing. It should be noted that multiple detectives reviewed a very large quantity of footage and at no time was any other subject seen wearing the unique clothing Neel was seen wearing.

During a review of images associated with the property damage to Nike Town and American apparel Task Force Officers located an image of a subject believed to be Neel running from American apparel during the damage. The subject is dressed in the black block attire, wearing a black beanie, a black hooded sweatshirt with white strings, a black denim jacket, black pants, brown shoes and black goggles. An image of Neel prior to the 1200 march was located of Neel wearing similar clothing, a black beanie, a black denim jacket and a black hooded sweatshirt with white strings. Later images (during the assault) of Neel show him wearing the black denim jacket, black jeans, brown shoes, and black goggles.

After identifying Neel as the suspect I conducted a records check on him in an attempt to locate a current address. I determined he did not have a Washington State Drivers license or any vehicles registered in his name to associate him with a specific address. Additional databases were reviewed and several addresses were located to be associated with Neel. Detectives conducted follow-up investigation including surveillance on various addresses and determined Neel was most likely residing at 1129 29th Ave S in the city of Seattle. The listed address was documented in one of the various databases indicating Neel had recently listed that address as being associated with him. Surveillance was conducted at 1129 29th Ave S Seattle WA and the following observations were documented (see appendix B for photos): 06-20-2012 at approximately 1517hrs Phillip Neel was observed exiting the front door of the residence. Neel is then seen walking to the mailbox assigned to unit #1, and retrieving the mail. Neel is then observed sorting through the mail, placing some of it into the recycle bin, and bringing the remaining mail inside. On 06-25-2012 at approximately 2031hrs Neel is again seen exiting the front door of the residence and leaving. On 06-26-2012 at approximately 1639hrs a UPS delivery driver is was observed arriving and knocking on the door of 1129 29th Ave S unit #1. After receiving no response the driver left a delivery notice attached to the front door. On the same date at approximately 1743hrs, Neel is observed exiting the residence retrieving the delivery notice and checking the mail. Neel was again observed sorting through the mail placing some in the recycle bin and taking the rest inside. At approximately 1857hrs Neel is seen briefly opening the front door peering outside then going back in. At approximately 19274hrs Neel was observed opening the front door and placing the delivery notice back on the door. On 06-27-2012 at approximately 1113hrs Neel was observed exiting the front door of 1129 29th Ave S and leaving the area. Later the same day I observed Neel in the area of Seattle Central Community College, (he was wearing the exact outfit I observed him wearing when he left the residence) Neel altered his appearance since 05-01-2012 by cutting his hair shorter and shaving off his facial hair. Based on my observations I confirmed Neel was the same subject

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Affidavit for Search Warrant,
Page 5 of 12

Original: Court File
Copy: Police File
Copy: Judge's Copy

Affidavit for Search Warrant (continued)

observed freely coming and going from 1129 29th Ave S. I was able to get a close up look of Neel, approximately six feet away. I was also able to observe a unique tattoo Neel has on his right arm.

Additional surveillance was conducted of 1129 29th Ave S unit #1 and the Neel was observed freely coming and going from 1129 29th Ave S unit #1 on multiple dates and times— See Appendix B for exact date and times.

I am requesting this warrant to search 1129 29 Ave S unit #1 Seattle WA to recover the clothing worn by Phillip Neel on 05-01-2012, these items include but are not limited to a red stocking hat, a plaid sleeveless shirt, black pants, brown shoes, a red bandana, black jacket, a black sweatshirt with white strings a pair of goggles and a beanie cap. I am also requesting authorization to seize any additional evidence in whatever form of the crime of riot/property damage and/or assault that occurred on 05-01-2012 (Neel is observed carrying one of the red anarchist flags attached to a wood dowel – See appendix A). These items include but are not limited to clothing, weapons, paint, dowels or stakes with attached black, red or red/black flag, hammers, incendiary devices and any anarchist material.

Although it has been approximately two months since the incident I believe it is very likely Neel still has the clothing he was wearing on 05-01-2012 in his possession. Public images of Neel were located from various websites showing him at protests/demonstrations dating back to October 2011. Neel is seen wearing similar clothing as he wore on 05-01-2012 specifically the red stocking had and black hooded sweatshirt with white strings.

W. FRIESEN
Affiant

SEATTLE POLICE DEPT. # 6744
Agency, Title and Personnel Number

Subscribed and Sworn to before me this 5 day of July, 2012

CATHERINE SHAFFER
Judge

Issuance of Warrant Approved:

By _____
Deputy Prosecuting Attorney

CATHERINE SHAFFER

BEST AVAILABLE IMAGE POSSIBLE

Appendix A

Images captured prior to and during the initial march at approximately 1200hrs on 05-01-2012



Appendix A cont.

Images captured prior to the march that occurred at 1500hrs on 05-01-2012 and prior to the assault on Officer Agate



Appendix A cont.

Still images of the assault on Officer Agate (captured from video)



Appendix B

Photographs depicted show the front door of 1129 29th Ave S unit #1 Seattle, WA



06-20-2012 1517hrs



06-20-2012 1518hrs



06-25-2012 2031hrs

06-26-2012 1743hrs



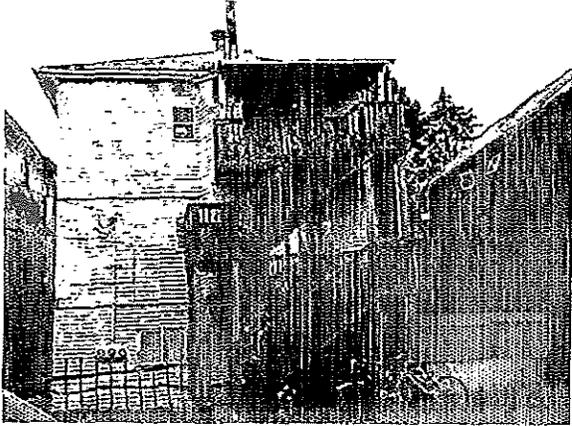
06-26-2012 1857hrs

06-26-2012 1924hrs

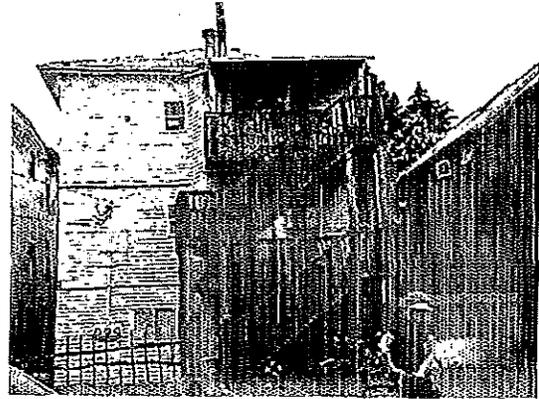


06-27-2012 1113hrs

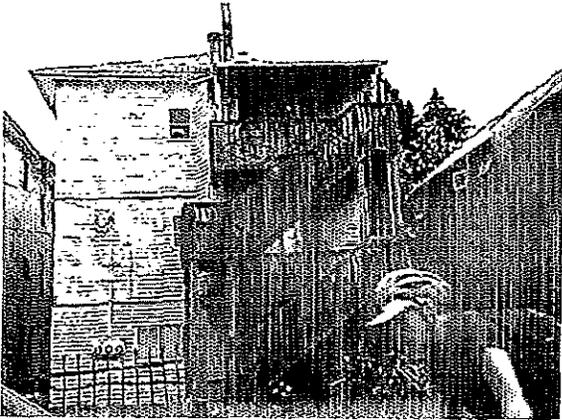
Photographs depicted show the rear of 1129 29th Ave S Seattle, WA – Unit # 1 located on top floor



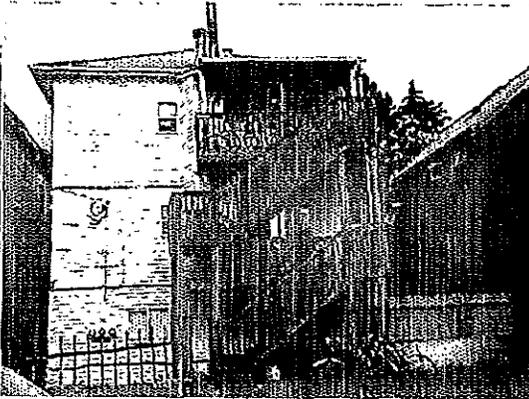
06-29-2012, 1656hrs



06-30-2012, 1041hrs



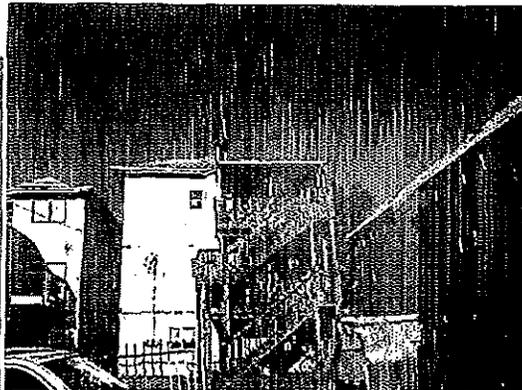
06-30-2012, 1041hrs



06-30-2012, 1812hrs



07-01-2012, 0835hrs



07-04-2012, 1900hrs

APPENDIX B

APPENDIX C

DECLARATION OF MAXAMIA OCTAVIA CODELLA

My name is Maxamia Octavia Codella. My date of birth is February 27th, 1987.

On Tuesday, May 1st, 2012 I was with Mathew Kyle Duran, Bradley A. Cordero Collins, and Amber K. Fritsch. Matt came to our house (I live with Bradley Collins and Amber Fritsch at 1307 Eastside ST NE) early in the afternoon. We spent the day playing card and board games. Around 7 PM Matt and I ordered food from Emperor's Palace for dinner.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Handwritten signature of Maxamia Octavia Codella in blue ink.

1307 Eastside ST NE
Olympia, WA 98506

August 27th, 2012

DECLARATION OF BRADLEY COLLINS

My name is Bradley A. Cordero Collins and I'm 22 years old – born on October 7th 1989. On May 1st 2012, I spent the day with Maxamia O. Codella, Matthew Duran, and my partner Amber K. Fritsch at our home in Olympia. We spent the day playing board and card games and enjoying each others company. I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Brad Collins



8/27/12

1307 Eastside St. NE

Olympia, Wa 98506

APPENDIX D

UNITED STATES DISTRICT COURT

Dated JUL 23 2012

M. M. Mbram, Clerk of Court
US District Court of Oregon

for the District of Oregon

By Deputy Clerk

Pages

Through

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Case No.

'12-MC-268 - F

BRYAN MICHAEL WEIDEMAN, DOB 8/16/1986,
6846 N Greenwich Ave., Portland, Oregon

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the District of Oregon

(Identify the person or describe the property to be searched and give its location):
BRYAN MICHAEL WEIDEMAN, DOB 8/16/1986, 6846 N Greenwich Ave., Portland, Oregon. See Attachment A, attached hereto and incorporated herein.

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized):

The information and items set forth in Attachment B which is attached hereto and incorporated herein by this reference.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before

[Signature] August 3
(not to exceed 14 days)

in the daytime 6:00 a.m. to 10 p.m.

at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge

ON DUTY
(name)

I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) for _____ days (not to exceed 30).

until, the facts justifying, the later specific date of

Date and time issued:

July 20, 2012 3:05 PM

City and state: Portland, Oregon

[Signature]
Judge's Signature

Dennis J. Hubel, United States Magistrate Judge
Printed name and title

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ATTACHMENT A
PLACES TO BE SEARCHED

The places to be searched are:

- a. 7129 NE 8th Avenue, Portland, Oregon. This is a two level off-white house with turquoise trim, a white fence around the front yard, and an enclosed garage. The house is located on the corner of 8th Avenue and NE Buffalo;
- b. 4820 NE 31st Avenue, Portland, Oregon. This is a single level dark purple house with dark purple trim and a multi-level water feature in the front yard which appeared to be non-functional;
- c. 6846 N. Greenwich Avenue, Portland, Oregon. This is a single level grey home with white trim and windows on two sides of the house located at a higher position, indicating a possible attic or second level; and
- d. a Red, four-door, Plymouth Breeze with Washington license plate 780USL;
- e. a 1993, white, Chevy Astro van with Oregon license plate TDM979;
- f. and
- f. The persons of Bryan Michael Weideman, Joanna Levy, Michael James Coatney, Jeanna Romano, and Kerry Cunneen, to the extent that any viable relevant articles of clothing (including but not limited to clothes, shoes, backpacks, and accessories) may be seized.

ATTACHMENT B ITEMS TO BE SEIZED

The items to be seized are the following items or materials that may be evidence of the commission of, the fruits of, or property which has been used as the means of committing federal criminal violations of Destruction of government property, in violation of 18 U.S.C. § 1361; Conspiracy to destroy government property, in violation of 18 U.S.C. § 2385; Interstate travel with intent to riot, in violation of 18 U.S.C. § 2101; and Conspiracy to travel interstate with intent to riot, in violation of 18 U.S.C. § 371, namely:

- a. Clothing and related articles worn during commission of the offenses, including but not limited to: black clothing, backpacks, face coverings, shoes;
- b. Paint (green, red, black, grey, and blue/purple);
- c. Sticks and flags similar to those used or carried during the commission of the offenses, and material for making flags;
- d. Anti-government or anarchist literature or material;
- e. Documentation and communications related to the offenses, including but not limited to notes, diagrams, letters, diary and journal entries, address books, and other documentation in written or electronic form;
- f. Indicia of residency or indicia of possession of relevant items;
- g. Flares or similar incendiaries; and
- h. Computers, cellular phones, mobile communication and storage devices, and electronic storage media of any form. The seizure of computers is authorized, but not the search of computers.

APPENDIX E

FBI raids homes in North & NE Portland

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APPENDIX F

"One of the best nonfiction books of 2011." Want a [free sample book chapter](#)?

Green Is The New Red

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BREAKING: FBI and JTTF Raid Multiple Homes, Grand Jury Subpoenas in Portland, Olympia, Seattle

by Will Potter on [July 25, 2012](#)

in [Terrorism Court Cases](#)

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"One of the best nonfiction books of 2011." Want a [free sample book chapter](#)?



FBI agents raid homes in Portland, Ore.

As I've been reporting on [Twitter](#), there have been multiple homes raided and grand jury subpoenas issued in Portland, Olympia, and Seattle.

Three homes were raided in Portland, by approximately 60-80 police including FBI and Joint Terrorism Task Force. Individuals at the homes say police used flash grenades during the raid.

Grand jury subpoenas have been served to individuals in all three cities: 2 in Olympia, 1 in Seattle, and 2 in Portland. The grand jury is scheduled to convene on August 2nd at the federal courthouse in Seattle.

No arrests have been made. Electronics were confiscated along with additional personal items.

All legal documents related to the searches and grand jury are sealed, and the FBI will only say it is related to an "ongoing violent crime" investigation. But based on interviews with residents, and what police told them at the scene, this is clearly related to the ongoing demonization of anarchists and the Occupy movement.

I'll continue updating as this develops; please [follow me on Twitter](#) ([@will_potter](#)) for the latest.

UPDATE: Here's [local press from the Oregonian](#).

UPDATE: Reports of FBI and police lingering around after the raids, trying to get people to voluntarily talk. Know your rights, never talk to police without an attorney.



Ari P
[@kvltcake](#)

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[@will_potter](#) lawyer like person just came to my house with papers in hand. My house was not raided. They are still out front.

25 Jul 12

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UPDATE: KGW news has photos of a raid. FBI agents dressed paramilitary. [More photos on KGW](#).

Tagged as: [Anarchist](#), [FBI](#), [Grand Juries](#), [JTTF](#), [Occupy Wall Street](#), [Raids](#)

Previous post: [Earth First! Journal Review: "significant realism at times visionary and prophetic"](#)

APPENDIX G



OregonLive.com

Everything Oregon

FBI raids three homes in North and Northeast Portland

Published: Wednesday, July 25, 2012, 9:45 AM Updated: Wednesday, July 25, 2012, 1:13 PM



Stuart Tomlinson, The Oregonian
By



[View full size](#)

Stuart Tomlinson/The Oregonian

A home at Northeast 31st Avenue where a search warrant was served.

The FBI served search warrants at three North and Northeast Portland homes early Wednesday as part of an "ongoing violent crime" investigation, said Beth Anne Steele, a spokeswoman for the agency.

The warrants were served at 4820 N.E. 31st Ave., 7129 N.E. Eighth Ave., and 6846 N. Greenwich.

No arrests were made.

"The warrants are sealed, and I anticipate they will remain sealed," Steele said.

Some residents in the area of Northeast Alberta Street awakened to the sound of a helicopter circling overhead.

The home at Northeast 31st Avenue, a block from Alberta, is a two-story purple home with purple trim. It was raided around 6 a.m., FBI agents were still at the location as of 10:15 a.m.

Rosa Aguilar, who owns the home and rents it out, said she believed that agents were not looking for the current tenants but a group that moved out more than a year ago. Aguilar said she did not renew the group's lease because she had received so many complaints about them.

Puanani Leal, who has lived in the neighborhood three years, described the former tenants as "anarchists" who ran an information booth at Alberta Street's Last Thursday event. She said large numbers of people were in and out of the house while the group was living there.

She was home when the FBI arrived this morning.



Enlarge

Mike Zacchino, The Oregonian

PORTLAND, OREGON -- July 25, 2012 -- Law enforcement officials served a warrant and removed evidence from a house at 6846 N. Greenwich. Mike Zacchino/The Oregonian

FBI raids homes in north and northeast Portland gallery (14 photos)

"I just heard lots of pounding at 6 o'clock, and I got up and I saw the whole thing," Leal said. "I saw them screaming to get in. They were using the battering ram, and then finally the door just opened."

She said the current occupants came out and agents very quickly let them go.

Near the 7129 N.E. Eighth Ave., home neighbors said no one has lived in the house for several years. In recent months, neighbors noticed activity -- a light on inside, groups of people in their early 20s coming and going. They didn't cause any trouble but seemed to be living in the house.

Then, a month ago, an officer in a patrol car was seen checking out the home.

Neighbors said they heard multiple loud bangs around 6 a.m. this morning, followed by yelling.

By 10:30 a.m., the FBI had left. The rundown home appeared to be empty but for a chair and a desk and a roll of paper towels visible from a window. The grass was overgrown, but the grass in a side yard looked trampled down.

At the location on North Greenwich, the FBI was finishing up processing evidence around 11 a.m. At the one-story blue gray home, agents carted out paper evidence bags sealed in red tape.

Agents examined yard debris. They took pictures inside the house and photographed a white van parked in the driveway.

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APPENDIX H

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

General

File # 200H-35-97936

On (date) 7/27/2012

item(s) listed below were:

- Received From
- Returned To
- Released To
- Seized

(Name) _____

(Street Address) 1520 N Interstate ^{ave} ~~St~~ Glenside PA 19038

(City) Paoli PA

Description of Item(s): #1) 1 tan (w) print 1 tan black print

#2) 1 M. 2012 (The Post) L(A) OFFICE

#3 Account Literature

#4) Black envelope white paper envelope

#5 Letter from Washlat to Person (addressing letter)

#6 Black Screen printing ink

#7 Black (w) print

#8 Black envelope white paper envelope

#9 Items Addressed to 401 N Mississippi Ave, Glenside PA, 19038, Paoli

10. Paoli High School, a DVD

#10 S. H. Black hat

#11 Box up with Address to Person, Wiedman & Green, 11/1/2011

#12 George's Super Boots size 9

#13 1 Banner "Come with us A"

#14 1 Gray polyester hat

#15 1 purple shirt, black (w) print, window Bell falls

10-2, white window Dec seats

Received By: [Signature]
(Signature)

Received From: _____
(Signature)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # 266 H - BE - 97936
SE

On (date) 7/25/2012

- item(s) listed below were:
- Received From
 - Returned To
 - Released To
 - Seized

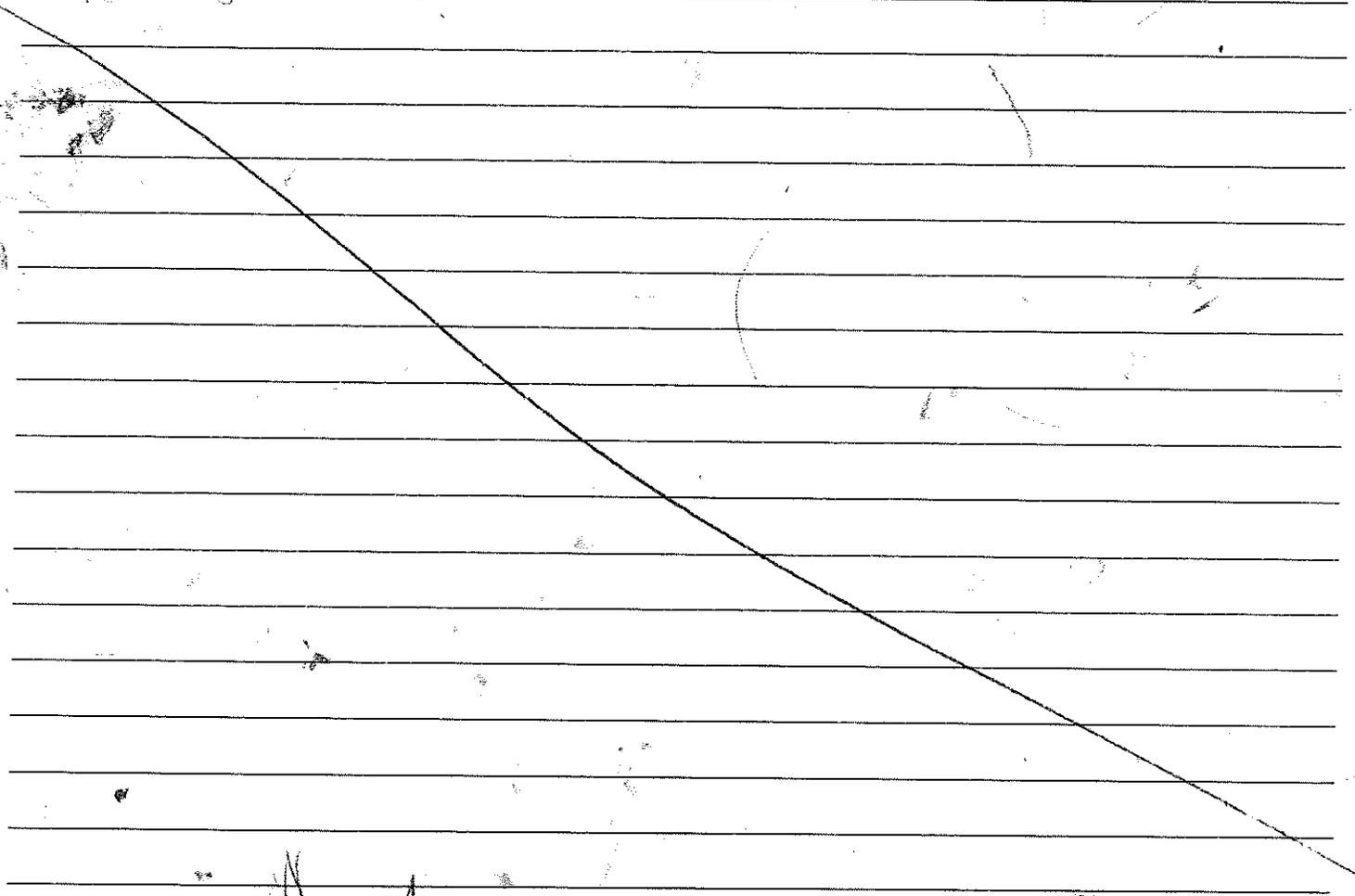
(Name) _____

(Street Address) 1520 N Interstate ave Astoria OR 97106

(City) Port land OR

Description of Item(s):

- #17 Computer tower computer SN: CNF5332W6Q
- #18 Apple Mac power G4
- #19 Seagate 200 G hard drive SN: GRY29ABZ



Received By: [Signature]
(Signature)

Received From: _____
(Signature)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # 266H-SC-97936

704

On (date) 7-25-12

item(s) listed below were:

- Received From
- Returned To
- Released To
- Seized

(Name) Red Plymouth vehicle

(Street Address) 6846 N Greenwch Ave

(City) Portland, OR

Description of Item(s):

- (1) Anarchist Communion pamphlet, paper with passwords, self storage unit 1/206 in to, glove compartment.
- (2) bottle of lighter fluid, trunk of vehicle
- (3) 2 wooden sticks, one with red and black flag, trunk
- (4) Glass war means attack banner, trunk

Nothing Follows

Received By: N/A
(Signature)

Received From: [Signature]
(Signature)

"COMPUTER"

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # 266 H-SC-97936

13 45 AM

On (date) 7 25-12

item(s) listed below were:

- Received From
- Returned To
- Released To
- Seized

(Name) _____

(Street Address) 6846 N Greenwich Ave

(City) Portland, OR

Description of Item(s):

- (16) Digital SLR Nikon camera w/ media card, # 3200379, Room C, closet
- (17) Nokia T-Mobile cellphone and Audyssey phone, Room 6, box on floor in Levy possession in box
- (18) Fujifilm 19 XD Card, Room 6 in olympus camera Levy possession - box
- (19) iPod, Room 6 in box on floor, Levy possession - box
- (20) Fuji film Quick snap camera, Room 6 on shelf
- (21) HP Notebook Computer, model mini 110-11, SN: CNW938XC04 w/ cards, Room 6 on floor.

Nothing Follows

Received By: NIA (Signature)

Received From: _____ (Signature)

"COMPUTER"

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # 26667 SF-97436

10/11/12

On (date) 7-25-12

item(s) listed below were:

- Received From
- Returned To
- Released To
- Seized

(Name) _____

(Street Address) 6846 N. Greenwich Ave

(City) Portland, OR

Description of Item(s): (1) HP Compaq # D0078K, Room A, on desk

(2) Motorola CD-R / DVD-R, 8 total, Room A on table and on desk

(3) CD and disc drive with compact LTO drive, Room A on table

(4) Asus white laptop, serial # MSWEP096E780 w/ power cord, Room F

(5) PNY 16GB Black USB, Room F

(6) Samsung cellular phone, SN# RR1B927455E, Room F, in gray backpack on chair, w/ charger

(7) 2GB Micro SD card in broken USB Holder, Room F, in corner

(8) Black + silver computer missing left side of casing, SN# 0027646684, Room F, corner of room

(9) Black USB 2.0 external drive, Room F, on floor

(10) Gateway laptop, # GWTF63406EX, Room C, bedside table

(11) Motorola Blackberry phone # 07616250135, Room C, bedside table

(12) 2 CDs, Room C, bedside table

(13) HP Tower, silver, # 24A8420262, Room C, on floor

(14) I pad, 4G, silver, Room C, on floor

(15) Motorola cell phone, # F556115-2VDS, Room C on bed

Received By: NIA
(Signature)

Received From: _____
(Signature)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # 266H-50-97936

10 45 AM

On (date) 7-25-12

- item(s) listed below were:
- Received From
- Returned To
- Released To
- Seized

(Name) _____

(Street Address) 6846 N Greenwich Ave

(City) Portland, OR

- Description of Item(s):
- (17) Next adventure receipt dated 4/28/12, in wallet in black backpack in Room G
 - (18) Black mask, hanging wall, Room G w/ long ymess on it
 - (19) Glasses, Room G on floor in corner
 - (20) Blue mask w/ cut out, Room G on floor against wall
 - (21) Black baseball cap, Room G in box on floor
 - (22) Black addressbook, Room G, on floor beneath clothes
 - (23) Black LMS backpack, Room G on floor
 - (24) "Box" of checks addressed to Juanca (w/ no checks in box) Room G on floor
 - (25) Black balaclava and pink bandana, Room G, shell on wall
 - (26) Misc Anarchist literature, Room G, floor in corner
 - (27) Black leather boots, Room G by head of stairs
 - (28) Two utility bills for Juanca Romano, Room C on computer table

Nothing Follows

Received By: N/A
(Signature)

Received From: _____
(Signature)

"General"
 UNITED STATES DEPARTMENT OF JUSTICE
 FEDERAL BUREAU OF INVESTIGATION
 Receipt for Property Received/Returned/Released/Seized

File # 266H SE-97936

10.45am

On (date) 7-25-12

item(s) listed below were:

- Received From
 Returned To
 Released To
 Seized

(Name) _____

(Street Address) 6846 N. Greenwich Ave(City) Portland, ORDescription of Item(s): ① Receipt/mail/document bearing name
Juanita Levy (2 pieces), Room A

- ② Green shoes taken from Wiedeman
- ③ Black pants w/hole taken from Wiedeman
- ④ Letter addressed to Juanita, Room A
- ⑤ Belt taken from Michael Courtney
- ⑥ Black sweater, Room B, kitchen counter near stove
- ⑦ Drawing from refrigerator "Wombat is the shit", Room B
- ⑧ Drawing of ship w/ (A) on sail, refrigerator door, Room B
- ⑨ Tag # 9294129 dated 5 Jul 12, travel receipt/tag "Bryan Wiedeman", Room B, trash can in kitchen
- ⑩ Misc utility bills in name of Michael Courtney and repair slips signed by Juanita Romano, Room B, Top of refrigerator
- ⑪ "Old Rye" black denim pants, Room F, inside open black backpack
- ⑫ Red wallet/bag w/ documents inside, Room G in box on floor
- ⑬ Studded belt, Room C, on bed
- ⑭ 2 prescription bottles for Bryan Wiedeman, Room C, backpack
- ⑮ 35 mm film, Room C, closet
- ⑯ Pin ^R(A)[→], in box, Room G, Levy possession in box

Received By: _____

(Signature)

Received From: _____

(Signature)

APPENDIX I

Court documents detail searches for May Day riot suspects

By CASEY MCNERTHNEY, SEATTLEPI.COM STAFF
Published 8:12 p.m., Sunday, August 12, 2012

A bandana, a pair of Nikes, a sex offender's chat with his corrections officer and tips from the public.

All have led police to narrow the search for those they say are responsible for the Seattle May Day violence.

Recently released police reports detail the investigation thus far. The detectives' statements also show just the cost of the May 1 riot.

Niketown repairs totaled \$52,825.74; the Wells Fargo bank at Fourth Avenue and Seneca Street had at least \$25,978.13 in damage and a Verizon Wireless store had \$1,905.30 in damage.

Several other businesses, including American Apparel, Home Street Bank and Bank of America had thousands of dollars in damage. Damage to city property and the old federal courthouse also cost tens of thousands of dollars.

Police say one suspect was identified after her sex offender boyfriend admitted to his corrections officer he was at the protest.

Investigators said the pair was photographed during the demonstration, though prosecutors have yet to charge either. Because the sex offender acknowledged being at the protest as a street medic and because he had red paint spatter on his clothing, "it is reasonable to believe he was either present or involved with the property damage," a detective wrote in a search warrant affidavit.

An initial search of their bedroom turned up a bandana and backpack matching the description of the one worn by the girlfriend during the May Day riot, according the recently released search documents. A bandana and backpack were among items taken later that day after Seattle police received the warrant.

A separate suspect who had his residence searched weeks later – a man who allegedly wore Nikes while shattering a Niketown window – was identified after two people who knew details about him called police on the May Day tip line, according to the recently released public documents.

With that information, investigators say they verified his address from previous contacts with the suspect.

During a search of his residence, police say they confiscated a pair of Nikes they suspect the 27-year-old man wore while damaging the downtown Seattle Niketown. It was one of at least three searches in Seattle related to the May Day investigation.

Though some of the May Day vandalism suspects have been charged in federal court King County Superior Court, none of the suspects affiliated with three recent searches have had their cases forwarded to prosecutors.

"This is still very much an active and ongoing investigation," Sgt. Sean Whitcomb said Thursday, noting there are additional suspects police are investigating. "Our task force with several detectives is still in place and we are working diligently to identify all those responsible for crimes during May Day and hold them responsible."

The first of the three known Seattle police searches was May 24 at the sex offender's Shoreline home, where his girlfriend also was. The second search was June 15 in Ballard at the Niketown suspect's residence, and the third was July 10 at the Judkins Park rental home of at least one other suspect.

While some details of those searches have been reported, several details of what exactly led police to those homes and how specifically they gained authorization for the searches have not been.

Corrections officer helped identify suspect

During the first search on May 24, police were looking for clothing and clear plastic goggles they think the registered sex offender wore during the May Day violence.

That man pleaded guilty to communications with a minor for immoral purposes in September.

Investigators say footage reviewed by the May Day Task Force shows his girlfriend throwing a projectile at police, which hits an officer in the head before deflecting onto the head of another officer.

Law enforcement officers familiar with the sex offender's case recognized that 21-year-old woman, police documents show.

The man's corrections officer reported searching a bedroom dresser and finding a black bandana that appeared to be the one worn by the woman during the officer attack. A backpack the girlfriend also wore that day was also inside the home, according to police.

Detectives took their case to a Superior Court judge who reviewed police statements and photos of both the sex offender and his girlfriend allegedly at the May Day protest before authorizing the search. Police seized a black jacket, a backpack, black pants with red paint, two pair of goggles, two bandanas and a green sweatshirt.

Police: Vandalism suspect wore Nikes at Niketown

The 27-year-old man who police say wore a pair of Nike's while vandalizing Niketown was known to officers for multiple previous contacts, according to investigation documents.

On July 12, 2011, he was suspected of shoplifting from a Ballard 7-Eleven, but was never charged. The following September, the man was a passenger in a young woman's BMW when it was involved in a Magnolia crash.

The third incident was Oct. 16 when police say the man, who was with other Occupy Seattle protestors at Westlake Park, shoved an officer in the chest and fled. He also was not charged in that incident.

But investigation documents show two people spoke to Seattle police on the May Day tip line, giving the man's name and details about his home.

Investigators say video shows the suspect, who wore a purple undershirt and black jeans, running from the crowd to damage a Niketown window. They also report having footage of him jumping on the rear window of a car during the riot, frightening the driver.

"Multiple photographs of (the suspect) were obtained using various databases/sources and after reviewing the images I can say with certainty (he) is the subject seen in the video and still images located by the May Day task force damaging property throughout the downtown shopping district of Seattle," Detective Wes Friesen wrote in an investigation document.

Detectives say he also was seen striking a Bank of America window with a garbage can lid. The suspect failed to break that window, but another person spray painted an anarchist symbol on the bank. Later footage shows the Nike-clad suspect shattering a window at the Verizon Wireless store near Sixth Avenue and Olive Way, police say.

A King County Superior Court judge approved a search of his three-bedroom Ballard home.

Police seized a purple shirt from his bedroom, black jeans, two purple scarves, alleged anarchist solidarity paperwork, a backpack, two belts, a notebook, a Washington driver's license and an envelope with the suspect's address.

Police say they also took the pair of black Nike's with red spots he's suspected of wearing while vandalizing Niketown.

Third search

During the May Day riots, the third suspect who had his home searched kicked an officer in the way "that someone would do when trying to blow out a knee," Friesen wrote in an investigation document. The 23-year-old man allegedly kicked the officer as his attention was directed to a hostile crowd and investigators believe it was done to cause significant injury.

"There are multiple images of (the suspect) throughout the day's events on 05-01-2012 attempting to change/alter his identity by using different variations of his clothing," Friesen wrote. "It should be noted that multiple detectives reviewed a very large quantity of footage and at no time was any other subject seen wearing the unique clothing that (the suspect) was seen wearing."

That 23-year-old is believed to have fled from American Apparel wearing black goggles, police said.

Police authorized surveillance from outside the suspect's home in Judkins Park more than two weeks before their June search.

Investigation documents show the items seized during the July 10 search were: black goggles, a

black sweatshirt with white strings, a pink scarf, a notebook, a black bandana, a black stocking hat, paperwork about anarchists in the occupy movement, a black glove and paperwork about a strike on May 1.

A blog report about the search by The Dissenter said the sweatshirt belonged to the suspect's girlfriend and a pamphlet taken was something that could have been picked up at any Occupy action. That blog also reported a pair of sunglasses was taken, but that is not listed in the search warrant return, which is a public document.

The Stranger spoke to one of the men at the Judkins Park residence when it was searched, and the search warrant return shows four people were present that day. Read the Stranger account [here](#).

Casey McNerthney can be reached at 206-448-8220 or at caseymcnerthney@seattlepi.com. Follow Casey on Twitter at twitter.com/mcnerthney.

APPENDIX J

Lesson 5: Agreements to snitch hurt our movement

Beyond potential grievous personal effects from so-called snitch agreements, our movement cannot afford to accept such agreements. If a person who is arrested claims to have been granted permission to snitch on a friend, there's no way for us, as a movement, to verify this while that friend is on the run. This could then pressure the activist who is not in custody to come out of hiding long enough to verify or debunk the alleged agreement. An activist might even feel guilty into saying it was alright for a comrade to testify against him or her. Allowing such pressures would hinder direct action, and this is simply unacceptable.

When law enforcement agencies see us give up our friends, they see it as a weakness they can exploit. Accepting 'agreements to snitch' would make us appear a weak movement of snitches, whose activists only need to be leaned on harder to make them cave. It is only by embracing a security culture over a snitch culture that our movement will successfully continue its brilliant history of carrying out liberations and economic sabotage actions.

Lesson 6: If you can't do the time, don't do the crime!

If you're going to participate in illegal action, you have to go into it with the understanding that the action may fail and that you may end up in jail for years. With careful planning this isn't likely, but it's still something one must prepare for. If you can't even stomach the thought of spending a few months in jail, you do not belong in a campaign group in this day and age of government repression.

So shape up, and think about why you're really in this movement and what it really means to you. Isn't helping to save animals from torture worth spending some time in jail? But, don't kid yourself about it. If you aren't willing to do the time, don't do the crime!

Lesson 7: There's no place in the movement for snitches

Sadly, someone who becomes a snitch by implicating other activists to law enforcement agents as having participated in illegal/underground actions simply can never be trusted again. Violating such a deep-seated trust demonstrates a fundamental lack of commitment to the movement. Once such a trust has been violated, there's no way to ensure that it will not happen again, unless we ostracize the snitch from our movement.

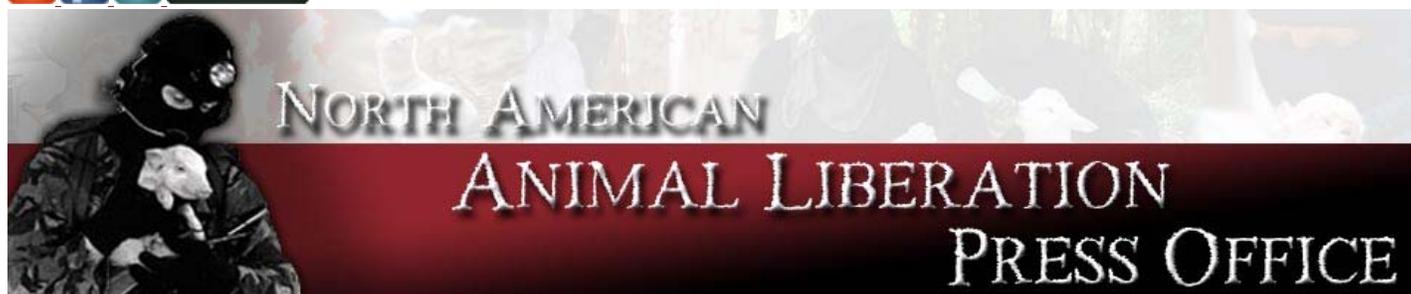
While in some cases it may be tempting to afford a remorseful snitch the benefit of the doubt and give him or her a second chance, it is imperative that we recognize how much harm this could do. Letting a snitch back in the movement could jeopardize other activists who don't realize what s/he is capable of. Even if a snitch sticks purely to above-ground activism, it's all too likely s/he will end up passing on harmful information yet again. After finding initial success with a particular source, law enforcement agents will likely continue to work on prying more information out of the snitch.

Furthermore, forgiving snitches would send a message that one can simply testify against a fellow activist to get a lighter sentence, and then simply be forgiven afterwards with no real consequences. Not only would this promote a 'snitch culture,' but it would also send a message to underground activists that the above ground movement won't be there to support them and do what little we can to try to prevent anyone from snitching on them.

Law enforcement agencies certainly believe the old adage "once a snitch, always a snitch," and we would be foolish not to take it very seriously ourselves.

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Snitches

Snitches and Informers

Jacob Ferguson, of Eugene, Oregon



Jake Ferguson – ELF
Founder, Informer &
Snitch

Court records indicate that by spring 2004, Ferguson was wearing a hidden recording device in an effort to bait others, into incriminating themselves. He admitted in a [cooperating agreement](#) in 2007 that he set fire to the US Forest Service Ranger Station in Detroit, OR and a government pickup in 1996. He admitted to being granted immunity plus \$50,000 for his cooperation, and received 5 years probation. Ferguson, searched out others and had them recount experiences while he was wearing a recording device. The recordings provided investigators the evidence that they needed to convict Daniel McGowan, Jonathan Paul, Joyanna Zacher and Nathan Block (who all received sentences of 5-7 years). Ferguson wore the hidden recorder to the 2005 annual Earth First! gathering, to the Public Interest Environmental Law Conference at the University of Oregon, and to meetings with six of his former partners, by then scattered across the country. FBI and Forest service special agents were possibly tracking him since 1996, when an accomplice at the Detroit Ranger station fire left a Slingshot organizer phone book in a local phone booth. Ferguson was under surveillance for nearly 5 years when a roommate assumed he had stolen her truck after an argument, reported it stolen and filed a restraining order against him, putting him further on the police radar. He was using heroin heavily by 2003, when feds contacted Ferguson and lied to him about people within the community linking him to the Romania fire and other arsons. That, ostensibly, is when Ferguson agreed to cooperate. He was never indicted for the over 15 acts of sabotage he admitted and he may have been financially compensated for his cooperation.

Current/background information: Was residing in Eugene, OR, until being [incarcerated for violating probation](#). In federal court in Eugene on 7/14/11, Ferguson was charged in state court with manufacture, delivery, possession of heroin, cocaine, methadone, and others; child neglect and child endangerment. His probation report indicates Ferguson tested positive for opiates on 3/29/11. For this probation violation, Ferguson received 22 months in prison (the bottom end of range). Judge Ann Aiken made his sentence concurrent (meaning he will serve both sentences at the same time). He is at Estill FCI. His projected release date is 3/21/13.

He has a pentagram tattoo on his forehead.

Stan Meyerhoff

Stanislas “Stan” Gregory Meyerhoff, also went by “Jack” of Charlottesville, Virginia

Informant status: Meyerhoff was the first of the group called “The Family” to be sentenced, and the first to snitch once arrested. Charged with May 1999 arson at Childers Meat Co. in Eugene; 1999 arson at Boise Cascade office in Monmouth, OR; toppling of a Bonneville Power Administration tower; arson at the Eugene Police Department West University Public Safety Station; arson at Superior Lumber Co., in Glendale, OR; arson of sport utility vehicles at a Eugene car dealership; arson of Jefferson Poplar Farms in Clatskanie. He admitted guilt in his first hearing in front of an arraignment judge. Meyerhoff eventually pleaded guilty in a [cooperating agreement](#) to conspiracy and arson charges in a string of 20 fires that did \$40 million worth of damage in five states, including a 1998 fire at the Vail ski resort in Colorado. Meyerhoff, who admitted to fashioning the devices to start the fires, was sentenced to 13 years in prison.

Stan Meyerhoff
– Snitch

Jen Kolar

Kolar testified against Briana Waters, who was sentenced to 6 years in prison. Further evidence was confirmed when the well known Earth First! lawyer, Stu Sugarman, stated in court that Jonathan Paul’s arrest was based on the testimony of Jen Kolar.

Kolar pled guilty to 4 counts so far: attempted arson of Ray Gun Club, conspiracy of UW, UW arson, UW 924(c). Cavel West transferred to WA soon, Litchfield not prosecuted. Sentencing recommendation 60-84 months and is scheduled for late July, 2008.

Jen Kolar – Snitch

Lacey Phillabaum

Phillabaum plead guilty in Tacoma, WA to arson (UW Horticulture), conspiracy and the 924(c) incendiary device charge. Her recommended sentence is 3-5 years. Justin Solandz’ name was mentioned several times during the factual statement of the plea, and the extent of her cooperation was very expansive, including wearing wires and continuing to cooperate with the feds post-incarceration. The transcript will be ordered and disseminated as soon as possible.

Sentencing is set for 1/5/07 at this time but may be postponed.

Lacey Phillabaum –
Snitch

Suzanne Savoie

Chelsea Gerlach, Suzanne Savoie and Darren Thurston, along with Kevin Tubbs, Stan Meyerhoff and Jacob Ferguson (see above) have all been named in court proceedings as cooperating with the authorities, which has included making statements against others.

At sentencing, Savoie’s defense attorney said she had to reveal other people’s roles “of necessity” and that it was “just the nature of the system” although it was hard for her to snitch on other people

Both Gerlach and Savoie have made statements against Nathan Block and Joyanna Zacher. (See below)

Suzanne Savoie –
Snitch

Kendall Tankersley

At her sentencing, arresting officer Decoyer stated that Kendall was terrified about cooperating at first, but after she heard from or read a letter from Foreman (Ferman?) (or once he got involved?), she cooperated fully.

For extraordinary cooperation and for being the least involved with the least crimes, she got 46 months in jail plus full restitution and 3 years



supervised probation.

Kendall Tankersley –
Snitch **Chelsea Gerlach**



Chelsea Gerlach, Suzanne Savoie and Darren Thurston, along with Kevin Tubbs, Stan Meyerhoff and Jacob Ferguson (see above) have all been named in court proceedings as cooperating with the authorities, which has included making statements against others.

Both Gerlach and Savoie have made statements against Nathan Block and Joyanna Zacher. (See below)

Chelsea Gerlach – Snitch

Darren Thurston

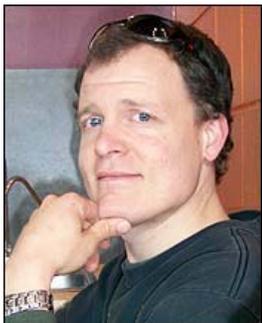


Chelsea Gerlach, Suzanne Savoie and Darren Thurston, along with Kevin Tubbs, Stan Meyerhoff and Jacob Ferguson (see above) have all been named in court proceedings as cooperating with the authorities, which has included making statements against others.

Read Darren's plea agreement and more [here...](#)

Darren Thurston –
Snitch

Kevin Tubbs



At Tubbs' sentencing, Asst. US Atty. Kirk Engdall said that Tubbs cooperated three weeks after his arrest and that his cooperation was substantial, but that his initial reluctance to cooperate, after he DARED to get legal advice from an attorney first, (only after he learned of 3 snitches against him: Ferguson, Meyerhoff and Kolar-in that order) was considered.

Kevin Tubbs – Snitch

Briana Waters

A violin teacher from California admitted she helped set the fire that destroyed the University of Washington's Center for Urban Horticulture. Briana Waters faced a retrial for the 2001 fire and had previously maintained her innocence. But on June 14th, she told the federal judge she played a role in the arson at the University of Washington and has become a snitch for the FBI. She'll likely get a four-year sentence and have to testify against the alleged ringleader of the arson crew, a former boyfriend.



Briana Waters –
Snitch

Ryan Lewis



Ryan Lewis –
Snitch

In the criminal complaint against Eric McDavid, Zachary Jenson and Lauren Weiner (who are all currently under federal indictment) it states:

“On August 31, 2005 FBI Joint Terrorism Task Force (JTTF) Agents interviewed Lewis, who identified McDavid in a digital photo recovered from the hard drive of Lewis’s computer. Lewis further advised that McDavid was a friend and had intentions to travel by hitchhiking to protest destinations across the country, including the presidential inauguration in Washington DC.”

No more is known at this time about the nature of Lewis’s cooperation with the government. All that is known is that he identified and discussed someone else with the FBI and that person was later arrested. Ryan Lewis was sentenced to 6 years in federal prison after pleading guilty to two counts of attempted arson and one count of arson. After completing his sentence he will have a three year term of supervised release and be ordered to pay \$243,000 restitution.

Lauren Weiner



Lauren Weiner –
Snitch

Lauren Weiner, Zachary Jenson, and Eric McDavid were arrested in Auburn, CA on Jan 13, 2006 as part of the government’s Green Scare campaign. They were charged with conspiracy to destroy property by means of fire or explosives, facing up to 20 years in federal prison for a crime that was never committed.

Zachary felt that he could no longer cope with waiting for trial at Sacramento County Jail and has decided to take the same plea agreement that Lauren Weiner took in May, which requires him to “cooperate fully with the government, and any other federal, state, or local law enforcement agency, as the government directs.” His new charges will hold a maximum 5 year sentence, but Zachary will have to live with himself for the rest of his life knowing he abandoned and informed on a friend. The full text of his plea agreement can be found [here](#).

Zachary Jenson



Zach Jensen – Snitch

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Justin Samuels



Justin Samuel – Snitch

Justin Samuels is the renowned snitch who offered testimony to imprison animal liberator Peter Young. Read Peter’s statement about Justin [here](#).

Stan Meyerhoff

Stanislas “Stan” Gregory Meyerhoff, also went by “Jack” of Charlottesville, Virginia

Informant status: Meyerhoff was the first of the group called “The Family” to be sentenced, and the first to snitch once arrested. Charged with May 1999 arson at Childers Meat Co. in Eugene; 1999 arson at Boise Cascade office in Monmouth, OR; toppling of a Bonneville Power Administration tower; arson at the Eugene Police Department West University Public Safety Station; arson at Superior Lumber Co., in Glendale, OR; arson of sport utility vehicles at a Eugene car dealership; arson of Jefferson Poplar Farms in Clatskanie. He admitted guilt in his first hearing in front of an arraignment judge. Meyerhoff eventually pleaded guilty in a [cooperating agreement](#) to conspiracy and arson charges in a string of 20 fires that did \$40 million worth of damage in five states, including a 1998 fire at the Vail ski resort in Colorado. Meyerhoff, who admitted to fashioning the devices to start the fires, was sentenced to 13 years in prison.

Stan Meyerhoff
– Snitch

Jen Kolar

Kolar testified against Briana Waters, who was sentenced to 6 years in prison. Further evidence was confirmed when the well known Earth First! lawyer, Stu Sugarman, stated in court that Jonathan Paul’s arrest was based on the testimony of Jen Kolar.

Kolar pled guilty to 4 counts so far: attempted arson of Ray Gun Club, conspiracy of UW, UW arson, UW 924(c). Cavel West transferred to WA soon, Litchfield not prosecuted. Sentencing recommendation 60-84 months and is scheduled for late July, 2008.

Jen Kolar – Snitch

Lacey Phillabaum

Phillabaum plead guilty in Tacoma, WA to arson (UW Horticulture), conspiracy and the 924(c) incendiary device charge. Her recommended sentence is 3-5 years. Justin Solandz’ name was mentioned several times during the factual statement of the plea, and the extent of her cooperation was very expansive, including wearing wires and continuing to cooperate with the feds post-incarceration. The transcript will be ordered and disseminated as soon as possible.

Sentencing is set for 1/5/07 at this time but may be postponed.

Lacey Phillabaum –
Snitch

Suzanne Savoie

Chelsea Gerlach, Suzanne Savoie and Darren Thurston, along with Kevin Tubbs, Stan Meyerhoff and Jacob Ferguson (see above) have all been named in court proceedings as cooperating with the authorities, which has included making statements against others.

At sentencing, Savoie’s defense attorney said she had to reveal other people’s roles “of necessity” and that it was “just the nature of the system” although it was hard for her to snitch on other people

Both Gerlach and Savoie have made statements against Nathan Block and Joyanna Zacher. (See below)

Suzanne Savoie –
Snitch

Kendall Tankersley

At her sentencing, arresting officer Decoyer stated that Kendall was terrified about cooperating at first, but after she heard from or read a letter from Foreman (Ferman?) (or once he got involved?), she cooperated fully.

For extraordinary cooperation and for being the least involved with the least crimes, she got 46 months in jail plus full restitution and 3 years



supervised probation.

Kendall Tankersley –
Snitch **Chelsea Gerlach**



Chelsea Gerlach, Suzanne Savoie and Darren Thurston, along with Kevin Tubbs, Stan Meyerhoff and Jacob Ferguson (see above) have all been named in court proceedings as cooperating with the authorities, which has included making statements against others.

Both Gerlach and Savoie have made statements against Nathan Block and Joyanna Zacher. (See below)

Chelsea Gerlach – Snitch

Darren Thurston



Chelsea Gerlach, Suzanne Savoie and Darren Thurston, along with Kevin Tubbs, Stan Meyerhoff and Jacob Ferguson (see above) have all been named in court proceedings as cooperating with the authorities, which has included making statements against others.

Read Darren's plea agreement and more [here...](#)

Darren Thurston –
Snitch

Kevin Tubbs



At Tubbs' sentencing, Asst. US Atty. Kirk Engdall said that Tubbs cooperated three weeks after his arrest and that his cooperation was substantial, but that his initial reluctance to cooperate, after he DARED to get legal advice from an attorney first, (only after he learned of 3 snitches against him: Ferguson, Meyerhoff and Kolar-in that order) was considered.

Kevin Tubbs – Snitch

Briana Waters

A violin teacher from California admitted she helped set the fire that destroyed the University of Washington's Center for Urban Horticulture. Briana Waters faced a retrial for the 2001 fire and had previously maintained her innocence. But on June 14th, she told the federal judge she played a role in the arson at the University of Washington and has become a snitch for the FBI. She'll likely get a four-year sentence and have to testify against the alleged ringleader of the arson crew, a former boyfriend.



Briana Waters –
Snitch

Ryan Lewis



Ryan Lewis –
Snitch

In the criminal complaint against Eric McDavid, Zachary Jenson and Lauren Weiner (who are all currently under federal indictment) it states:

“On August 31, 2005 FBI Joint Terrorism Task Force (JTTF) Agents interviewed Lewis, who identified McDavid in a digital photo recovered from the hard drive of Lewis’s computer. Lewis further advised that McDavid was a friend and had intentions to travel by hitchhiking to protest destinations across the country, including the presidential inauguration in Washington DC.”

No more is known at this time about the nature of Lewis’s cooperation with the government. All that is known is that he identified and discussed someone else with the FBI and that person was later arrested. Ryan Lewis was sentenced to 6 years in federal prison after pleading guilty to two counts of attempted arson and one count of arson. After completing his sentence he will have a three year term of supervised release and be ordered to pay \$243,000 restitution.

Lauren Weiner



Lauren Weiner –
Snitch

Lauren Weiner, Zachary Jenson, and Eric McDavid were arrested in Auburn, CA on Jan 13, 2006 as part of the government’s Green Scare campaign. They were charged with conspiracy to destroy property by means of fire or explosives, facing up to 20 years in federal prison for a crime that was never committed.

Zachary felt that he could no longer cope with waiting for trial at Sacramento County Jail and has decided to take the same plea agreement that Lauren Weiner took in May, which requires him to “cooperate fully with the government, and any other federal, state, or local law enforcement agency, as the government directs.” His new charges will hold a maximum 5 year sentence, but Zachary will have to live with himself for the rest of his life knowing he abandoned and informed on a friend. The full text of his plea agreement can be found [here](#).

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Zach Jensen – Snitch

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Justin Samuels



Justin Samuel – Snitch

Justin Samuels is the renowned snitch who offered testimony to imprison animal liberator Peter Young. Read Peter’s statement about Justin [here](#).

David Agranoff



Agreed to become a government informant as part of a plea agreement related to Earth Liberation Front crimes in Bloomington, Indiana, more than 10 years ago. In January, 2012, Agranoff was sentenced to 1 year and 1 day for misprision of a felony (knowing about the commission of a felony and failing to report it to the police). The court recommended he serve his time a low-security prison camp. He also received 1 year probation.

Current Information: He is current held in Forrest City FCI and scheduled to be released on 10-15-2012.

David Agranoff – Snitch

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- June 17, 2012 — [AMP Website Hacked](#)
- June 1, 2012 — [Trapper Website Hacked](#)

Essays

- [“Total liberation provides agency for all” – Press Officer Nicoal R. Sheen](#)
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Informant Tracking

This feature on the EF! Newswire keeps you abreast on the whereabouts and status of informants and 'snitches' who are cooperating with, or working for, the state in effort to monitor and/or repress ecological resistance movements, as well as other allied liberation struggles. Sadly, the names on this list are people who can never be trusted again to work in activist circles or resistance movements. The page is currently focused on North American informants. We appreciate assistance in broadening this to an international scope.

It is organized roughly by release date (when applicable) or date of cooperation from least to most recent. Please get in touch with possible updates or corrections; you can email us at ef_pris[at]riseup[dot]net with "Informant Information" in the subject line. We only post information on this page that can be verified to the greatest extent possible through public documents—in most cases, their plea agreements. We aim to present short summaries of these individuals, so that they are consolidated in a single location. There is very likely more information, including additional photos, to be found for each individual through online search engines and resources designed to gather personal information on people (some of which cost money). We hope that this page will serve as a useful starting point for those seeking to do further research. (Originally Posted 9/5/11; Updated 8/22/12)

Types of Informants listed:

Undercover Agent/Infiltrator: A law enforcement officer who uses an assumed name or fake identity to infiltrate a movement or organization to gather information or evidence. In political infiltration cases, an agent will typically pose as a sympathizer to a particular organization, gain the trust of its key members and then use this access to gather confidential information to pass on to the investigative agency. A secondary objective may be to lay the groundwork for a separate investigation. Undercover agents typically concoct a cover story as detailed as the assignment requires as well as a basic biography and plausible story covering past and present activities.

Informant: Individuals who are not employed as law enforcement agents who provide law enforcement agents with information, often in exchange for money. An informant ordinarily has previous involvement in – and more intimate knowledge of – the movement or organization that the agents are investigating.

Cooperating Witness: Similar to informants, except that cooperating witnesses usually agree to 'flip' or 'snitch' after being threatened with prosecution. Cooperating witnesses will testify in court in exchange for lesser charges being filed against them if there are any charges filed against them.

Law enforcement recruits informants and cooperating witnesses from the ranks of people already active within the movements or organizations being targeted. The government often threatens these individuals with charges carrying massive jail time, offering to not file charges in exchange for a promise to inform on others in the movement. Undercover agents, on the other hand, use false pretenses from the beginning of their association with any movement or organization.

Currently Walking Free:

Justin Clayton Samuel (DOB: Dec. 31, 1978) of Snohomish, Washington; Height: 6' 0". Weight: ~165 lbs. Hair: brown. Eyes: hazel. Race: white

Informant Status: Testified against Peter Young in charges related to cutting fences and liberating mink from a series of fur farms in October 1997.

http://earthfirstnews.files.wordpress.com/2011/08/justin_samuel.jpg

He was sentenced to two years in federal prison plus a year supervised release and ordered to pay \$364,106 in restitution in exchange for his cooperation (http://www.scribd.com/full/5496528?access_key=key-29pa1lxov8tmwdvu0vjh).

Current Information: He was released on 11-28-2001. As of 2010, he had gone into the computer security field, working for Firefox, and was a PhD student at UC Berkeley. His school department profile: www.eecs.berkeley.edu/~jsamuel (<http://www.eecs.berkeley.edu/%7Ejsamuel/>) His twitter: <http://twitter.com/#!/jstnsml> (<http://twitter.com/#!/jstnsml>)

"Anna" (DOB ~1986, according to court testimony): of Miami, Florida when she started working for the Feds

<http://earthfirstnews.files.wordpress.com/2011/08/anna-face-332736.jpg>

"Anna" photos from 2004-2005

Informant Status: Worked as an informant in the anarchist/environmental/animal rights movements since at least 2003 (during the FTAA protests in Miami). She attended various gatherings, meetings and protests up until January 2006 when [Eric McDavid](http://www.supporteric.org) (<http://www.supporteric.org>), Lauren Weiner, and Zachary Jenson were arrested in Auburn, CA and charged with conspiracy to destroy public and private property. During her time with the trio, Anna wore a wire, had a recording device in her car, possibly her bag, and the house they were living in (that the Feds paid for) was wired. She reported back to the feds about anyone and everyone she came into contact with—not just Eric, Zach and Lauren. The criminal complaint against Eric states that Anna was involved in the prosecution of at least 12 other "anarchist" cases. According to her testimony at Eric McDavid's trial, she was recruited by the FBI after going "undercover" to write a paper for a class about the FTAA protests. During her time as an informant, she reported on people attending Crimethinc gatherings, the DNC, the RNC, BioDev in Philly, the G8, Feral Visions and more. Her work entrapping Eric McDavid landed him in prison for a term of almost 20 years.

<http://earthfirstnews.files.wordpress.com/2011/08/anna-full-364986.jpg> *Current Information:* Anna is approximately 5'4" and of average build. During her time working for the feds, she dyed her hair frequently—sometimes blond, sometimes red, sometimes brown. She told people she was a medic,

wore a medic's garb and carried a medic's bag, although no one ever actually saw her perform any of the functions of a medic. She boasted of previous actions, was bold in her speech, and was incredibly pushy. She always had seemingly bottomless pockets and even paid for Weiner to fly across the country. According to FOIA documents, Anna was residing in Philadelphia at some point after Eric's arrest. Before Eric was arrested, Anna had used the email address: annadavies99@yahoo.com. She used this phone number prior to the arrests: 954-821-2477. She also sometimes told people that Anna was an alias and that "Grai Damiani" was her real name.

For more insight into Anna, you can read court transcripts of her testimony at Eric's trial at: [supporteric.org](http://www.supporteric.org) (<http://www.supporteric.org/>)

(<http://earthfirstnews.files.wordpress.com/2011/08/zach-jensen-2004.jpg>)

Zach Jensen 2004

Zachary Jensen (DOB: ~1986) of Monroe, Washington

Informant Status: Arrested on January 13, 2006, along with Eric McDavid and Lauren Weiner and charged with a single count of conspiracy to destroy by arson or explosives public and private property. His arrest was the direct result of a paid FBI informant, known as "Anna," (http://www.greenisthenewred.com/blog/elle_anna/421/) who spent over a year and half befriending and entrapping the trio. Zach plead guilty to a lesser charge on July 18, 2006 and was released on bail later that month. The terms of his **plea agreement (<http://supporteric.org/pdfs/07.18.06%20zachpleaagmt.pdf>) required full cooperation** with the government against Eric McDavid at trial, as well as in any and all other investigations in which the government deemed him useful. Zach received time served (which amounted to about 6 months) at his sentencing on December 4, 2008. His supervised release expired in December 2011.

Lauren Weiner's court sketch

Current Information: Zach has a medium build, with brown hair and brown eyes. He stands at about 5'5". His last known place of residence was Seattle, Washington. He fancies himself a writer and claimed to have been working on a book about his experiences (and warning others against following a similar path) during the time of his sentencing hearing. He has also claimed an interest in Buddhism, yoga and other "spiritual" pursuits. He is normally withdrawn and quiet and eager to please whatever company he might be keeping.

Lauren Weiner (DOB: ~1986) of Pound Ridge, New York

Informant Status: Arrested on January 13, 2006, along with Eric McDavid and Zachary Jensen. She was charged with a single count of conspiracy to destroy by arson or explosives public and private property. Her arrest was the direct result of a paid FBI (http://www.greenisthenewred.com/blog/elle_anna/421/) informant, known as "Anna," (http://www.greenisthenewred.com/blog/elle_anna/421/) who spent over a year and half befriending and entrapping the trio. Lauren was released on bond in early February 2006 and later plead guilty to a lesser charge on May 30, 2006. However, there is evidence that Lauren was cooperating with the government months before the plea agreement was signed. The terms of her **plea agreement (<http://supporteric.org/pdfs/05.30.06%20Lauren%20Weiner%27s%20Plea%20Agreement.pdf>) required full cooperation** with the government against Eric McDavid at trial, as well as in any and all other investigations in

which the government deemed her useful. Lauren received time served (which amounted to about 3 weeks) at her sentencing on December 11, 2008. Her supervised release expired in December 2011.

Current Information: Lauren has a heavy build, with brown hair and brown eyes. She stands at about 5'1". Her last known place of residence was Pound Ridge, New York (Westchester County). Lauren attended art school and is quite skilled in pottery and various other art forms. She is outspoken and often lies or engages in hyperbolic speech to impress those around her. Stories have surfaced about her attempting to attend fundraisers for Green Scare defendants after her release on bond.

Angela "Angie" Marie Cesario (DOB ~1979)

(<http://earthfirstnews.files.wordpress.com/2011/08/informants-from-estacada-arson.jpg>)

From top to bottom: Angie, Jeremy, Jake. (not recent)

Informant Status: Took a cooperating plea deal for a 2001 firebombing of logging and cement trucks in Oregon, pointing the finger at Tre Arrow to reduce her sentence. This was a departure from earlier testimonies, when both Cesario and Rosenbloom did not name Arrow as the instigator, but Jake Sherman. All three named Arrow in exchange for sentences of 41 months. She was released on 12-22-2006.

Current Information: none at this time.

Jeremy David Rosenbloom (DOB ~1977)

Informant Status: took a cooperating plea deal, pointing the finger at Tre Arrow to reduce the sentence. This was a departure from earlier testimonies, when both Cesario and Rosenbloom did not name Arrow as the instigator, but Jake Sherman. All three named Arrow in exchange for sentences of 41 months. He was released on 12-22-2006.

Current Information: none at this time.

Jacob "Jake" David Bardwell Sherman (DOB ~1982) of Portland, Oregon

Informant Status: Convicted of arson of logging trucks and a front-end loader near Eagle Creek in 2001. Sherman "immediately began to cooperate" with investigators after his arrest, according to court documents, naming three others who had participated in the arsons: Tre Arrow, Angela Marie Cesario and Jeremy David Rosenbloom and pegging Arrow as the ringleader in exchange for a sentence of 41 months.

Sherman was boastful and told several girlfriends (two of whom also provided information to the government), in detail, his version of the events that took place that night. Sherman had also not been an especially careful saboteur. His mother's vehicle smelled of gasoline and he dumped his clothes in the trash bin when he returned that night at 2:00 am, asking his brother to tell his parents that he had returned home at 10:30 pm. Sherman's father contacted the FBI telling them he believed his son was involved in the arson.

Current Information: none at this time.

Darren Todd Thurston aka "Goat," (DOB: ~1970) of Canada

(<http://earthfirstnews.files.wordpress.com/2011/08/darren-todd-thurston.jpg>)

Darren Todd Thurston

Informant Status: Took a cooperating plea agreement (http://ecoprisoners.org/Thurston.plea_agreement.redacted.pdf), charged with conspiracy to commit arson and destruction of an energy facility east of Bend, OR in 1999. Thurston was given a sentence of 37 months in prison after he pleaded guilty to conspiracy and arson in the 2001 fire at the Litchfield, Calif., U.S. Bureau of Land Management wild horse corrals.

Current Information: He was released on 8-14-2008. As of summer 2010, he was running his own computer security firm (<http://www.hard-mac.com/blog/> (<http://www.hard-mac.com/blog/>)) out of Canada. He goes by "rad_boy" and "hard_mac".

Stephanie Lynne Fultz (DOB ~1980):

Informant Status: Cooperated with the authorities and testified against Marie Mason and Jesse Waters after being charged with participating in one ELF action with Mason and Ambrose. In 2009, Fultz was placed on probation for two years and ordered to perform 100 hours of community service.

Current Information: none at this time.

Aren Bernard Burthwick (DOB ~1980):

Informant Status: Cooperated with the authorities and testified against Marie Mason after being charged with participating in one action with Mason and Ambrose. Burthwick was sentenced to 14 months in 2009.

Current Information: none at this time.

Trapper James Zuehlke (DOB: April 14, 1975), of Council Bluffs, Iowa

Informant Status: To evade his own legal issues, he provided information in 2010 on his brother Walter Bond's whereabouts and criminal activity, including going out of his way to trick his Walter into a location where he was arrested. While this is not a case of someone in the movement turning snitch, it does illustrate another example of how one may become an informant.

Current Information: He lives with wife Rhonda and three children. Employed at Jim Hawk Truck Trailers.

Lacey Phillabaum (DOB: ~1975) of Spokane, Washington

Informant Status: Phillabaum took a cooperating plea agreement (<http://ecoprisoners.org/laceygovtsentmemo.pdf>), pleaded guilty to conspiracy, arson, and use of a destructive device at the University of Washington's Center for Urban Horticulture in 2001. The university spent \$7.2 million to rebuild the center. She is very intelligent, calculated and manipulative. Phillabaum is a former *Earth First! Journal* editor, known for her role as the narrator of the underground documentary film *Breaking the Spell*, which advocates property damage and examines the 1999 Seattle WTO riots from the perspective of anarchists in Eugene, OR. In 2005 she moved to Charlottesville, VA, to take reporting position at *C-Ville Weekly*. She turned herself in to federal agents sometime around early 2006. In 2008, Phillabaum was sentenced to three years in federal prison and three years' probation.

Current Information: She was released on 4-21-2010 and is currently out after transitioning via a halfway house in Spokane, WA. She is thought to be living at her parents' house in Phoenix, AZ and reportedly seeking work as a paralegal.

(<http://earthfirstnews.files.wordpress.com/2011/08/tankersley.jpg>)

Sarah "Kendall" Tankersley

Sarah "Kendall" Harvey Tankersley (DOB: ~1977) of Ohio

Informant Status: Arrested while living in Flagstaff, AZ, charged with arson and attempted arson of US Forest Industries in Medford. Kendall received a 3-year, 10-month sentence. Judge Ann Aiken sentenced Tankersley to five months less than she agreed to when she took a cooperating plea agreement (<http://ecoprisoners.org/tankerleypleapet.pdf>) to arson at the US Forest Industry's office in Medford in 1998 because she cooperated with the state.

Current Information: She was preparing for medical school when she pled, and attended Humboldt State and graduated with molecular biology degree in 2004 so may be working in either field. She was released on 9-17-2010.

Suzanne Nicole Savoie aka "India," (DOB: ~1977) of Applegate, Oregon

(<http://earthfirstnews.files.wordpress.com/2011/08/suzannesavoie1.jpg>)

Suzanne Savoie

Informant Status: Charged with arson at Superior Lumber Co., in Glendale, OR. She was sentenced to more than 51 months in prison for her role in two arsons. She turned self in to FBI agents in mid-January 2006. Savoie made statements against Nathan Block and Joyanna Zacher and was given a sentence only 8 months less than expected because of her cooperation with investigators.

Current Information: Released in March 2011, living with her husband, Luke, in the Applegate Valley of southern Oregon. She attended the April 2011 screening of "If a Tree Falls" in Ashland and was heckled and harassed during and after the showing. She claims her "innocence" as a reluctant federal informant, and Luke has attempted to rejoin the activist community.

William "Billy" Jensen Cottrell (DOB 1980) of Gainesville, Florida

Informant Status: A former Ph.D. candidate at the California Institute of Technology who was convicted in April 2005 of conspiracy and arson, associated with the 2003 destruction of 8 sport utility vehicles and a Hummer dealership in the name of the Earth Liberation Front (ELF). He named Tyler Johnson as the 'mastermind' behind the arsons. He was sentenced to eight years in federal prison on arson charges and ordered to pay \$3.5 million in restitution. His lawyers appealed the verdict and sentence on account that he has Asperger's syndrome and it was upheld 2/3 of the way through his sentence.

Current Information: He was released August 16, 2011, and is now living in south Florida.

Ian Wallace (DOB: ~1981) Formerly of the Twin Cities and recently attending college at Stony Brook (NY) (<http://earthfirstnews.files.wordpress.com/2011/08/ian-wallace-image.jpg>)

Informant Status: Signed a cooperating plea agreement (<http://ecoprisoners.org/wallace%20plea.pdf>) on September 5, 2008 resulting in a sentence of three years in prison, beginning June 1, 2009, for his role in placing two failed firebombs at US Forest Service buildings where GE tree research was being conducted on the campus of Michigan Tech University in 2001. Wallace and another traveled from Minneapolis to upper Michigan for the action, according to the pleas agreement. He faced a maximum of 10 years in prison.

Wallace also admitted involvement in three other acts in the plea agreement: two in Saint Paul—sabotage of a building and vehicles at a US Forest Service research station in 2000 (loss \$25,186) and arson of the construction site of what is today the Cargill Building for Microbial and Plant Genomics on the University of Minnesota campus (loss \$630,000). He also admitted to involvement and named three other activists responsible for the destruction of 500 research GE trees in Rhinelander, Wisconsin: Bryan Lefey (who took a non-cooperating agreement) and was sentenced to 3 years in prison for the Rhinelander action, **Katherine Christianson** (<http://midwestgreenscare.files.wordpress.com/2009/01/katherineplea.pdf>) (who took a **cooperating agreement**) was sentenced to 2 years, and **Daniel McGowan** (<http://www.supportdaniel.org/>), serving a 7 year sentence currently. **Aaron Ellringer** (<http://midwestgreenscare.wordpress.com/2009/01/01/aaron-ellringer-sentenced-to-four-days-in-jail/>), who drove the activists to the Rhinelander site, cooperated with the government and was sentenced to four days in jail. *Please contact us with any further information on Christianson or Ellringer.* See Source (<http://tc.indymedia.org/2009/mar/midwest-elf-snitch-ian-wallace-sentenced-3-years>)

Current Information: He was released on 01-12-2012.

Daniel Kruk (DOB ~1980): of Baltimore, MD; Height: 6'5". Weight: ~250 lbs. Race: White

Informant Status: Daniel Kruk appeared in federal court in Indianapolis on July 19 2012, to offer a guilty plea and for sentencing for charges relating to an arson at the Republican National Headquarters in Bloomington, IN in 2000. At this hearing, it was disclosed that Kruk has been cooperating with the feds since 2009. Kruk was facing a sentence of up to 5 years and a fine of up to \$150,000 in restitution. Because of his cooperation, he received 4 years of probation

(no jail time), 2 years of community service (one 8-hour day a month), and a \$5000 fine.

Current Information: Kruk is currently on probation. He lives in Baltimore and works at a FedEx store.

Currently Serving Time:

David Agranoff (DOB ~1974) (<http://earthfirstnews.files.wordpress.com/2011/08/davidagranoff.jpg>)

Informant Status: Agreed to become a government informant as part of a plea agreement related to Earth Liberation Front crimes in Bloomington, Indiana, more than 10 years ago. According to the prosecution at Kruk's sentencing hearing, David Agranoff began "negotiating with the state on various issues" in 2009. In January, 2012, Agranoff was sentenced to 1 year and 1 day for misprision of a felony (knowing about the commission of a felony and failing to report it to the police). The court recommended he serve his time in a low-security prison camp. He also received 1 year probation.

Current Information: He is held in Forrest City FCI and scheduled to be released on 10-15-2012.

Briana Waters (DOB: ~1975), formerly of Oakland, California

(<http://earthfirstnews.files.wordpress.com/2011/08/briana-waters-11.jpg>)

Informant status: Sadly, this former non-cooperating ELF prisoner, took a cooperating plea deal (<http://www.indybay.org/uploads/2011/06/14/brianapleaagmt.pdf>) in the prosecution of two 2001 ELF acts of arson. She had been released earlier this year after a mistrial and is expected to testify against former boyfriend Justin Solondz, who was captured as a fugitive in China, is now in US custody and as of July 29 is awaiting trial (<http://earthfirstnews.wordpress.com/2011/07/29/justin-solondz-pleads-not-guilty/>) for alleged ELF activity.

Current Information: She has a young daughter and was working as a violin teacher prior to arrest. She is currently in Dublin FCI and will likely be released to a halfway house in December 2012.

Jennifer Lynn Kolar aka "Diver," (DOB: ~1973), originally of Spokane, later Seattle, Washington (http://earthfirstnews.files.wordpress.com/2011/08/jennifer_kolar.jpg)

Informant Status: Took a cooperating agreement (<http://ecoprisoners.org/kolarsentmemo.pdf>) pleading guilty to charges in connection with the firebombing at the University of Washington.

Current Information: Kolar has worked for a variety of animal rights and environmental causes

throughout the years, including an effort to prevent the re-establishment of native whaling practices in Washington State. She was often the 'computer security expert' for the groups she worked with. For the years prior to arrest, she spent much of her time sailing and racing a yacht, Manta Ray, an Olson 911 SE sail number 45, she co-owns. She was a chair of the Corinthian Yacht Club (CYC) of Seattle Large Boat Racing Fleet. She pursued doctorate degree at the University of Colorado, but turned self in to federal agents in Washington sometime around early 2006. She is currently held in USP Hazelton and scheduled to be released on 2-02-2013.

Jacob "Jake" Todd Ferguson (DOB: ~1972), of Eugene, Oregon

(http://earthfirstnews.files.wordpress.com/2011/08/jake_ferguson_elf-240x300.jpg)

Informant Status: Court records indicate that by spring 2004, Ferguson was wearing a hidden recording device in an effort to bait others, into incriminating themselves. He admitted in a cooperating agreement (<http://ecoprisoners.org/fergusonpleapetition.pdf>) in 2007 that he set fire to the US Forest Service Ranger Station in Detroit, OR and a government pickup in 1996. He admitted to being granted immunity plus \$50,000 for his cooperation, and received 5 years probation. Ferguson, searched out others and had them recount experiences while he was wearing a recording device. The recordings provided investigators the evidence that they needed to convict Daniel McGowan, Jonathan Paul, Joyanna Zacher and Nathan Block (who all received sentences of 5-7 years). Ferguson wore the hidden recorder to the 2005 annual Earth First! gathering, to the Public Interest Environmental Law Conference at the University of Oregon, and to meetings with six of his former partners, by then scattered across the country. FBI and Forest service special agents were possibly tracking him since 1996, when an accomplice at the Detroit Ranger station fire left a Slingshot organizer phone book in a local phone booth. Ferguson was under surveillance for nearly 5 years when a roommate assumed he had stolen her truck after an argument, reported it stolen and filed a restraining order against him, putting him further on the police radar. He was using heroin heavily by 2003, when feds contacted Ferguson and lied to him about people within the community linking him to the Romania fire and other arsons. That, ostensibly, is when Ferguson agreed to cooperate. He was never indicted for the over 15 acts of sabotage he admitted and he may have been financially compensated for his cooperation. He has a pentagram tattoo on his forehead.

Current information: Was residing in Eugene, OR, until being incarcerated for violating probation (<http://earthfirstnews.wordpress.com/tag/jake-ferguson/>). In federal court in Eugene on 7/14/11, Ferguson was charged in state court with manufacture, delivery, possession of heroin, cocaine, methadone, and others; child neglect and child endangerment. His probation report indicates Ferguson tested positive for opiates on 3/29/11. For this probation violation, Ferguson received 22 months in prison (the bottom end of range). Judge Ann Aiken made his sentence concurrent (meaning he will serve both sentences at the same time). He is at Estill FCI. His projected release date is 3/21/13.

(<http://earthfirstnews.files.wordpress.com/2011/08/chelsea-gerlach1.jpg>)

Chelsea Gerlach

Chelsea Dawn Gerlach (DOB: 1977) of Sweet Home, and later Eugene, Oregon

Informant Status: charged with arson at Childers Meat Co. in Eugene; arson at a Boise Cascade office

in Monmouth, OR; toppling of a Bonneville Power Administration tower; arson at the Eugene Police Department West University Public Safety Station; attempted arson at Jefferson Poplar Farms in Clatskanie. Gerlach pleaded guilty in a cooperating agreement (<http://ecoprisoners.org/gerlachpleapetition.pdf>) to conspiracy and arson charges in a string of 20 fires that did \$40 million worth of damage in five states, including a 1998 fire at the Vail ski resort in Colorado. After the group disbanded in 2001, Gerlach went underground and became a DJ in Portland, OR. At the time of her arrest, she was selling drugs in Portland with her boyfriend Darren Todd Thurston. Thus far, drug charges are not pending with either Gerlach or Thurston. Gerlach was extremely helpful to the prosecution, although she defends herself against being vilified as a snitch and **says she cooperated 'for the movement.'** Gerlach made statements against Nathan Block and Joyanna Zacher. She convinced Thurston to turn informant, unsuccessfully attempting to get Zacher, Block and McGowan to turn as well. She led the prosecution on several field trips to previous arsons and a buried cache of guns, ammunition and fake passports allegedly belonging to William "Avalon" Rodgers.

Current Information: She attended Evergreen University for a year prior to arrest. She identified herself as good with words and computers in an interview she did from prison with *Outside Magazine* in 2007. She developed an interest in Buddhism while incarcerated. She was sentenced to nine years in prison, is currently held in Tallahassee FCI and scheduled to be released on 10-10-2013.

Frank Brian Ambrose (DOB: ~1975), formerly of Bloomington, Indiana

Informant Status: Ambrose pleaded guilty in a cooperating agreement (<http://ecoprisoners.org/ambroseplea.pdf>) to conspiring to set a fire and explosion that caused more than \$1 million in damage to the offices of Michigan State University's Agriculture Biotechnology Support Project on New Year's Eve 1999. Ambrose became a paid FBI informant after his arrest (for disposing of evidence of actions in a dumpster that were found and law enforcement notified). Ambrose has provided information on 15 other people allegedly involved in ELF/ALF actions, including ex-wife Marie Mason. Court documents reveal that Ambrose was being used by the FBI not only to gather information on ELF/ALF activities but general movement organizing as well (specifically organizing against I-69 and Cincinnati Earth First! organizing). He "traveled outside of Michigan seven times at the FBI's direction, often working extremely late hours; he made repeated trips from Detroit to Grand Rapids; he made 178 consensual recordings of telephone conversations and in-person meetings with investigative targets; and he participated in lengthy interviews with the FBI's Behavioral Analysis Unit and otherwise assisted the FBI's efforts to improve its intelligence-gathering protocols related to, and its understanding of, underground environmental and animal-rights extremist groups and movements."

In sum, his cooperation with investigators after his arrest has been substantial and rather extraordinary. He was sentenced to 9 years in prison in 2008. He also received a lifetime of supervisory release after prison and was ordered to pay \$3.7 million in restitution to the University and for other sabotaged sites. There is speculation of an additional informant in Ambrose's case (listed as another confidential source in official documents). Confirmation and details on the identity of this person are currently pending.

Current Information: He is currently being held at Rochester FMC and has a projected release date of 12-23-2013.

Stanislas “Stan” Gregory Meyerhoff, also went by “Jack” (DOB: ~1977) of Charlottesville, Virginia

Informant Status: Meyerhoff was the first of the group called “The Family” to be sentenced, and the first to snitch once arrested. Charged with May 1999 arson at Childers Meat Co. in Eugene; 1999 arson at Boise Cascade office in Monmouth, OR; toppling of a Bonneville Power Administration tower; arson at the Eugene Police Department West University Public Safety Station; arson at Superior Lumber Co., in Glendale, OR; arson of sport utility vehicles at a Eugene car dealership; arson of Jefferson Poplar Farms in Clatskanie. He admitted guilt in his first hearing in front of an arraignment judge. Meyerhoff eventually pleaded guilty in a cooperating agreement (<http://ecoprisoners.org/meyerhoffpleapetition.pdf>) to conspiracy and arson charges in a string of 20 fires that did \$40 million worth of damage in five states, including a 1998 fire at the Vail ski resort in Colorado. Meyerhoff, who admitted to fashioning the devices to start the fires, was sentenced to 13 years in prison. After the group disbanded in 2001, Meyerhoff enrolled in college in Virginia, where he studied engineering.

Current Information: He is currently held at USP Terre Haute and is scheduled to be released on 7-08-2015.

(<http://earthfirstnews.files.wordpress.com/2011/08/kevin-tubbs.jpg>)

Kevin Tubbs

Kevin Tubbs (DOB: ~1969), originally from Nebraska, but had been living in Springfield, Oregon

Informant status: Tubbs attended Humboldt State University and was once editor of the *Earth First! Journal*. Despite his status as an informant, he still has an active support page at: www.supportkevintubbs.com (<http://www.supportkevintubbs.com/>). Tubbs cooperated three weeks after his arrest. His cooperation (<http://ecoprisoners.org/tubbspleapetition.pdf>) was substantial, after he learned of three snitches against him: Ferguson, Meyerhoff and Kolar—in that order. Tubbs’ testimony was sufficient enough to get Jonathan Paul indicted. Tubbs was an animal rights activist charged with arson of Oakridge Ranger Station; arson of Cavel West horse slaughterhouse in Redmond, OR, on July 21, 1997; attempted arson at US Forest Industries in Medford, OR, in December 1998; arson at Childers Meat Co., in Eugene; Sept. 6, 2000, arson at the Eugene Police Department West University Public Safety Station; Jan. 2, 2001, arson at Superior Lumber Co., in Glendale, OR; using a destructive device to set fire to sport utility vehicles at a Eugene, OR, car dealership in March 2001; arson at Jefferson Poplar Farms in Clatskanie, OR, in May 2001. In 2007, he was sentenced to nearly 12 years and 7 months in prison with 3 years supervised release.

Current Information: Tubbs is currently held in USP Lompoc and has a projected release date of 11-23-2016.

International Informants:

[This section is awaiting further information]

Mark Kennedy (<http://earthfirstnews.wordpress.com/2011/07/23/undercover-police-officer-unlawfully-spied-on-uk-climate-activists/>) and **Mark Jacobs** (<http://snitchwire.blogspot.com/2011/01/another-uk-snitch-mark-marco-jacobs.html>) are both UK-based international informants, used in cases against eco, animal and anarchist organizers. [See links for more information and images.]

Other News on Informants:

(http://earthfirstnews.files.wordpress.com/2011/08/dn_logo.png) Terrorists for the FBI:” How the FBI Uses Informants to Surveil and Entrap Americans — (video interview from the Democracy Now show based on the recent story in *Mother Jones* magazine (<http://motherjones.com/politics/2011/08/fbi-terrorist-informants>), “The Informants,” by Trevor Aaronson.) In collaboration with the Investigative Reporting Program at the University of California, Berkeley, reporter Trevor Aaronson examined more than 500 terrorism-related cases and found that nearly half the prosecutions involved the use of informants, many of them incentivized by cash rewards up to \$100,000 per assignment... the FBI has recruited a network of informants that today numbers 15,000... What we found in our investigation was that of the 500 terrorism prosecutions since 9/11, half of those involved the use of an informant.

(<http://earthfirstnews.files.wordpress.com/2011/08/b-darby-index.jpg>) Profiles of Provocateurs— Kristian Williams, the author of *Our Enemies in Blue: Police and Power in America* Recent published a collection of short case studies on Portland IMC regarding the use of agents provocateurs, including warning signs and practical advice. [Click here for the full article \(http://portland.indymedia.org/en/2011/06/408869.shtml\)](http://portland.indymedia.org/en/2011/06/408869.shtml).

Turncoat— (<http://www.thisamericanlife.org/radio-archives/episode/381/turncoat>) A show from *This American Life* about informant **Brandon Darby**, from the 2008 RNC cases of David McKay and Bradley Crowder. Following this show, Darby has started an informant advocacy group [Citizen Patriot Response \(http://citizenpatriotresponse.org/\)](http://citizenpatriotresponse.org/), which he encourages people to snitch on activists to the FBI. He has also admitted in recent speeches to right-wing neo-fascist Tea Party conference goers that he is traveling to Occupy camps around the country and attending assemblies to collect information and share it with the government.

Better This World— A PBS special, from the Point Of View (POV) series, on the use of Informant Brandon Darby in the arrests of two activists, David McKay and Bradley Crowder, during the 2008 Republican National Convention. [Check it out here. \(http://www.pbs.org/pov/betterthisworld/\)](http://www.pbs.org/pov/betterthisworld/)

SnitchWire— (<http://snitchwire.blogspot.com/>) Another source for occasional updates on informants. From their site: “SnitchWire exists solely for the purpose of investigating and objectively reporting on the existence and actions of known informants, infiltrators, rats, snitches, and

provocateurs. This blog is to be used as a tool for people wishing not to associate with such unsavory, treacherous scum.”

From Green is the New Red (<http://www.greenisthenewred.com/blog/music-video-by-against-me-about-eric-mcdavid-and-anna-the-fbi-informant/858/>) (also a great resource on informants):

“This [below] is Tom Gabel (<http://www.myspace.com/tomgabelmusic>) of Against Me! (<http://www.againstme.net/>) playing at the Nimbus Dam, the site Eric McDavid was allegedly plotting to blow up with Zachary Jenson and Lauren Weiner. An FBI informant named “Anna” (http://www.greenisthenewred.com/blog/2008/05/02/elle_anna/) provided the group with bomb-making recipes; at times financed their transportation, food and housing; strung along McDavid, who had the hopes of a romantic relationship; and poked and prodded the group into action.

Mark Reichel, McDavid’s attorney, said: “There has never been a case in America that has involved this much entrapment, this much pushing by an informant, by the U.S. government and by the FBI behind it.”

(http://www.democracynow.org/2011/8/25/terrorists_for_the_fbi_how_the%20%20)

If you value us keeping these informant bios available and up-to-date, help keep us around by subscribing or donating to the Earth First! Journal ([../donate-and-subscribe/](http://www.earthfirstjournal.org/donate-and-subscribe/)).

21 Responses to “Informant Tracking”

1. Annie Oakley September 8, 2011 at 2:29 pm #

You are incorrect about Jake Ferguson. FBI and Forest service special agents were tracking him since 1996, when his accomplice at the Detroit Ranger station fire left her slingshot organizer in a local phone booth. Ferguson was under surveillance for nearly 5 years already when the stolen truck incident occurred. Please update your snitchtracking website accordingly.

Reply

- o [efjcollective](#) October 13, 2011 at 4:43 am #

Done.. thanks for the input. Sorry for the delay.

Reply

2. snitch hater September 8, 2011 at 4:13 pm #

when y'all have time, pictures of these creeps would be an awesome addition.

Reply

- o [efjcollective](#) October 13, 2011 at 4:43 am #

Done..

Reply

- o ms freeh November 12, 2011 at 7:03 pm #

good database of informants and crimes committed by FBI agents

<http://whosarat.websitetoolbox.com/>

3. Elizabeth Tobier November 6, 2011 at 1:26 pm #

Walter Bond was mailed a copy of Earth First's Oct 18 posting covering his Oct 13 sentencing and directed me to submit the information requested at the end of that piece pertaining to the informant in his case: his brother, Trapper James Zuehlke. Trapper's personal information is posted on Negotiation Is Over, <http://www.negotiationisover.net/2011/10/20/trapper-james-zuehlke-the-paid-fbi-snitch-that-put-walter-bond-in-prison-is-his-brother/>. Walter provides a fairly detailed description of being tricked by his brother and what led to his arrest in his article, "Always Looking Forward," available on his support site, <http://www.supportwalter.org>.

Reply

4. Guest November 18, 2011 at 12:03 pm #

Jake Ferguson, as far as I am told, had the FBI purchase a condo for him in Eugene if he would agree to co-operate. He received a condo (paid for in full by the FBI) a reduced sentence, and \$50,000.00 to do the feds bidding.

Reply

- o Guest May 28, 2012 at 1:18 pm #

This information is a fact. The Condo is located on 40th and Donald in Eugene, Oregon Edgewood center condos right across the street from Safeway Supermarket.

Reply

5

M. Face January 4, 2012 at 1:30 pm #
 Hey y'all, this is awesome!

Correction: Briana Waters was living in Olympia, WA prior to her arrest, not Oakland.

How come there isn't a profile of Brandon Darby? He was recently spotted at Occupy Oakland, video-taping, asking people questions etc. There are some recent photos of him there. The folks at the Long Haul Infoshoppe might have more info if you wanna update this site.

[Reply](#)

6. [Dave](#) May 10, 2012 at 4:13 pm #

I don't have respect for snitches but people blowing up and burning things is so misguided and on the losing end of the losing end. When has something like that ever helped anything? It makes things worse. Because of people that do this, people have to put up with getting their wieners and boobs grabbed at the airport, idiotic! The government loves you, informants encourage you because it gives them an excuse to police us more, taking more of our freedoms away, creating more useless gov security jobs, it's a shame. You will NEVER win an agument blowing up and burning things.

[Reply](#)

7. [Mr green](#) May 22, 2012 at 6:56 am #

Can you post nforments out of utah

[Reply](#)

8. [GC](#) August 24, 2012 at 3:59 am #

does anybody have list of snitches for flagstaff, AZ

[Reply](#)

Trackbacks/Pingbacks

1. [New "Informant Tracking" feature on the Earth First! Newswire « Earth First! Newswire](#) - September 7, 2011

[...] Informant Tracking [...]

2. [Denver Anarchist Black Cross](#) - September 8, 2011

[...] collective has posted a featured page on the EF! Newswire website this week which allows people to learn details about those who are known informants in the government's effort to monitor and repress ecological and animal activists. While a recent [...]

3. [Walter Bond sentenced to another 7 years in prison « Earth First! Newswire](#) - October 18, 2011

[...] Informant Tracking [...]

4. [Walter Bond sentenced to another 7 years in prison-usa « actforfreedomnow!](#) - October 20, 2011

[...] and the extent of his cooperation, please post it as a comment to the Earth First! Newsire's Informant Tracking [...]

5. [Negotiation Is Over! – Informant Tracking](#) - October 23, 2011
[...] Posted by Earth First [...]
6. [Informant speaks alongside anti-immigrant sheriff at Tea Party conference in Orlando this weekend](#) « [Earth First! Newswire](#) - November 9, 2011
[...] Informant Tracking [...]
7. [Negotiation Is Over! – FBI Informant speaks alongside anti-immigrant sheriff at Tea Party conference in Orlando this weekend](#) - November 13, 2011
[...] who is being promoted as a “Former Black Panther turned FBI Informant,” is also featured on the Earth First! Newswire’s Informant Tracking page. He had been providing information to the government since at least 2007. His efforts resulted in [...]
8. [Earth First! Journal Publishes Giant List of Informants](#) « [Documentatie Inlichtingendiensten](#) - June 25, 2012
[...] before. Many are cooperating informants we have not previously listed. Much kudos towards EF! for putting this out, hopefully the resource is consistantly [...]
9. [ELF prisoner Jesse Waters to be released soon](#) « [Earth First! Newswire](#) - August 22, 2012
[...] Informant Tracking [...]

[Blog at WordPress.com.](#)
Theme: [Bueno](#) by [WooThemes](#).

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APPENDIX K

**Pierce County Sheriff's Department
Informant Consent Form**

I, John J Towery II herby agree to assist the Pierce County Sheriff in the investigation of criminal violations occurring in Pierce County or other specified areas. I understand that I am not an employee of the Pierce County Sheriff's Department. I agree to the following:

- 1 I herby release and acquit the Pierce County Sheriff's Department and it's agents from any injury or liability, which I may suffer or sustain now or in the future assisting the Sheriff's Department.
- 2 I am aware that I may have to testify in future court proceedings and I agree to do so if necessary.
- 3 I will not conduct or participate in any investigations unless a member of the Pierce County Sheriff's Department is supervising it.
- 4 I will follow the instructions of the Pierce County Sheriff Department's case officer while assisting in an investigation.
- 5 I will not carry any weapons or firearms while assisting the Pierce County Sheriff's Department.
- 6 I will not commit any crimes or break any laws while assisting the Pierce County Sheriff's Department.
- 7 I will not handle illegal drugs unless specifically authorized to do so by a member of the Pierce County Sheriff's Department.
- 8 I am not a police officer and will not represent myself as one.
- 9 I will not use sex or any sexual activity to induce or persuade any person to commit a crime.
- 10 I will not engage in any activity that would be entrapment or any that would persuade a person to commit a crime that they would not otherwise commit.
- 11 I will stay in touch with the case officer and keep him/her apprised of my whereabouts until all cases are completed, including testifying in court.
- 12 I will submit to polygraph examinations at any time at the request of a case officer.
- 13 I will page/call D/Sgt Adamson as determined by him.

14 This consent does not replace any contracts drawn up by the Pierce County
Prosecutor's office or any other agency.

I have entered into this agreement voluntarily without duress.

John J. Towery
Operative
19 MAR 07
Date

[Signature]
D/Sgt Christopher D. Adamson

Witness

MULTISTORY WHT HOUSE VAN/MIRRO BU
17 TOWARD DOWNTOWN ON LEFT SIDE
ACROSS ON HOUSTON

From: "Towery II, John J CIV USA IMCOM" <john.towery@us.army.mil>
To: <cadamso@co.pierce.wa.us>
Date: 8/23/2007 3:43:41 PM
Subject: Anti-Police Rally

//LE Sensitive Information//

Chris,

****Below information is derived from discussion and has not been published or made public****

There will be an anti-police rally in Tacoma Tues, 28 Aug. I do not have the location yet, but the times are tentative 4:00 pm until 6:00 pm. They may try to provoke any patrols in the area, and will have basic anti-police signs.

[REDACTED] should be some of the key persons involved. They will try to enlist the help of the SA people living in the house on 17th and G.

The SA people can be considered have an AKA International Anarchist Conspiracy (IAC) (Eugene Anarchist) many were involved with the incidents in Seattle with the counter protest to the Minutemen rally.

I got a good look at the new "shield" and is like the WAJAC described. One on the tactic they will use is to flip the shield upside down with the bar loops at top and run a long pole through and hold then put a banner on the outside to conceal the screws and the fact they have the heavy plastic (about 1/2 inch black Plexiglas plastic).

Some of the shields are in Olympia and not confirmed they have some in Tacoma.

Call me if you have any questions,

John

CC: "Rudd, Thomas R CIV USA IMCOM" <thomas.r.rudd@us.army.mil> En SEA

Q MEETING

- 1.5 YOA LADY IN SEATTLE HARD CORE
WANTED TO PUT ACED IN SHIELDS

- EVER SAT Q MLE ATTEND POONOT BOMBS
GLENN & PONGO

MITCH - MIKE MORE HARDCORE THEN GLENN + PONGO

MITCH - BRENDON

2000
2030 - 2300 STILL GOING
8/22 BRENDON HOUSE ON
[REDACTED] B-DAY
[REDACTED] LIVE OR HAV
[REDACTED] AVE E DLY
MULTISTORY YELLOW
[REDACTED] CRX

[REDACTED] HAS SHIELD X2

PARTY ATTENDANT
-> 3 GUYS

- GLENN
- MARY
- MIKE
- PONGO - IANCO PIONEER
- WALLY [REDACTED] MONTICLO
- JEFF [REDACTED]
- MITCH GONE TO SEA
- PHIL [REDACTED] DUE IN ARREST

GO BY
IAC

- BREAKING OF FAUM PMR
- ROMAN ANARCHIST OBJECTIVE
- SHIELDS HAD PAPER SPRAY

- GLENN (NOT [REDACTED])
- PONGO
- MIKE
- BRENDON [REDACTED]
- MITCH [REDACTED]
- KIM [REDACTED]
- PHIL [REDACTED] - ABOR

- DID TALK ABOUT USE OF SCREWS IN SHIELD
- SPOKE ABOUT AEROT PROVOCATORS
- SPOKE ABOUT CANADA

- WIDESPREAD PS
- GROUP SMOKING MARI & HOUSE
[REDACTED] SUPPLIED UNDERAGE DRINKING

3 BDU
RT.3 w/ EQUED
LATE SUP/EARLY OCT.

The Honorable ROBERT J. BRYAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILIP CHINN,

Plaintiff,

v.

BENJAMIN BLANKENSHIP, ET AL

Defendants.

NO. C09-5119 RJB

DECLARATION OF RICK SCOTT
REGARDING PLAINTIFF'S
MOTION TO COMPEL

I, RICK SCOTT, declare under penalty of perjury under the laws of the State of Washington that the following is true and accurate:

1. I have been employed by the Grays Harbor County Sheriff's Department since 1977. I have been the Department's Undersheriff since 1995. As such, my duties include oversight of all day-to-day operations of the Sheriff's Department.

2. I was in charge of the Sheriff's Department's resources deployed or utilized in support of the City of Aberdeen Police Department's responsibility for providing law enforcement response and security for the deployment of military equipment for shipment out of the Port of Grays Harbor in May 2007.

1 3. In the course of preparing for the United States military's shipment of equipment out of
2 the Port, I and others periodically received intelligence briefings from the United States
3 Department of the Army and the United States Coast Guard. These briefings included written
4 threat assessments, intelligence reports, and other information these federal law enforcement
5 entities deemed important to maintain security for the shipment of military equipment. These
6 documents contained references to confidential sources supporting or drafting the threat
7 assessments and intelligence reports. We were repeatedly instructed this information was for law
8 enforcement officials' eyes only and was not to be publicly disseminated.
9

10 4. The Grays Harbor County Sheriff's Department is obligated to honor these legitimate
11 instructions from federal officials to maintain the confidentiality of these threat assessments and
12 intelligence reports they provided to us. Public dissemination of these documents would reveal
13 confidential intelligence sources and law enforcement procedures and tactics for maintaining Port
14 security, thereby jeopardizing the effectiveness of these or similar operations and the safety of the
15 personnel involved in providing intelligence information and security. Breaching these federal
16 agencies' legitimate instructions to maintain the confidentiality of their threat assessments and
17 intelligence reports also would undermine their willingness to help us in a similar fashion should
18 we again need their assistance in the future.
19

20 SIGNED this 23 day of October, 2009 in Montesano, Washington.
21

22 
23 RICK SCOTT
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HONORABLE ROBERT J. BRYAN

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

PHILIP CHINN,

Plaintiff,

v.

BENJAMIN BLANKENSHIP, individually and in his capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE BLANKENSHIP, and the marital community thereof, RICHARD C. PIGMON, individually and in his Official capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE PIGMON, and the Marital community thereof; MARK S. SVINTH individually and in his Official Capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE SVINTH and the Marital community thereof; JONATHAN P. PITTS, individually and in his Official capacity as a TROOPER of the WASHINGTON STATE PATROL, and JANE DOE PITTS and the Marital Community thereof; CARRIE A GORDON individually and in her Official capacity as a TROOPER of the WASHINGTON STATE PATROL and JOHN DOE GORDON and the Marital community thereof; CITY OF ABERDEEN, COUNTY OF GRAYS HARBOR, DOES 1-250,

Defendants.

NO. C 09 5119 RJB

DECLARATION OF DONALD RAMSDELL IN OPPOSITION TO MOTION TO COMPEL

**NOTE ON MOTION CALENDAR:
Friday, October 30, 2009**

DECLARATION OF DONALD RAMSDELL IN
OPPOSITION TO MOTION TO COMPEL - 1

Cause No: C09-5119 RJB

*LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511*

1 PURSUANT TO 28 U.S.C. § 1746, Donald Ramsdell declares as follows:

2 1. I am competent to testify in all respects, and make this declaration from
3 personal knowledge.

4 2. I am the Chief of Police at the Tacoma Police Department. I have been in this
5 position since 2003. I have been a member of the Tacoma Police Department for
6 approximately 24 years. During my time in the Tacoma Police Department I have held
7 many positions including several years as a member of the Special Investigations
8 Division.

9
10 3. In our department we have three bureaus, the Operations Bureau, the
11 Criminal Investigations Bureau, and Administrative Services Bureau. Comprised
12 within each bureau may be smaller divisions or units. In the Criminal Investigation
13 Bureau, there is a smaller division called the Special Investigations Division (SID). SID
14 conducts investigations into narcotics activity, prostitution activity and other types of
15 crime requiring the use of undercover officers.

16
17 4. In order for the undercover officers to operate in that capacity, we take
18 measures to protect their identity. This includes removing all photos of them from
19 within the department. It also includes not publically identifying them as being
20 undercover officers. If we were to identify them, even by name, a member of the public
21 may be able to use that information to positively identify them as an undercover officer.
22 In the age of the internet only minimal information, such as a name, is necessary to
23 determine a person's home address. Armed with a home address an individual who
24 wanted to do our officer harm could easily do so. At a minimum it compromises the
25 investigations that the officer is involved with, and at most it compromises the safety of
26 the officer and their family.

DECLARATION OF DONALD RAMSDELL IN
OPPOSITION TO MOTION TO COMPEL - 2

Cause No: C09-5119 RJB

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511

1 5. I am aware that in the present case, someone is seeking to have us reveal the
2 identity of a current undercover officer whose name has been redacted from documents
3 they have received through discovery. If we were forced to reveal even the name of our
4 undercover officer, it would have a chilling effect on our ability to use undercover
5 officers. In turn, it would have a chilling effect on our ability to conduct undercover
6 operations to investigate criminal activity. At the time of the creation of the documents
7 this detective was working in an undercover capacity and he is currently working in an
8 undercover capacity.
9

10 6. In addition, we currently house and employ members of the Regional
11 Intelligence Group (RIG) who include Intelligence Analysts. The role of these analysts
12 is to obtain information on groups and individuals suspected of or known to be criminal
13 in nature. The information is then analyzed by the intelligence analysts and they draft a
14 threat assessment and/or formal analysis of the information. This analysis is vital to
15 the safety and investigations of criminal activity. These analyses contain both general
16 and tactical advice to law enforcement on how to investigate and respond to the threat
17 indicated. If this information were to be released it would have a chilling effect on the
18 ability of the intelligence analysts to give their assessments. Without these assessments
19 the ability of our officers to effectively investigation and response to criminal activity
20 would be severely limited.
21
22

23 7. In the present case, some of the analyses were pertaining to protest activity
24 and the potential violent acts of some of the protestors. Responding to protests groups
25 provide a unique challenge as they generally protests the same area, and thus our
26 tactics and plans will generally be the same for each event in a given area. Said another

1 way, if they receive the information we used to prepare for a protest at the Port of
2 Tacoma, they will have it and be able to use that information the next time there is a
3 protest at the Port of Tacoma.

4 8. Our intelligence analysts receive information that they in turn analyze. These
5 analyses are crucial to the offices and command staff that are planning to and
6 responding to protest activity. In these circumstances the focus is not on peaceful non-
7 violent protestors, but those who wish to do harm to persons and/or property. If our
8 intelligence analyses were released, they would undoubtedly be downloaded onto the
9 internet for all to see. The result would be that any organization or individual who
10 wanted to do harm, would have direct access to our tactics, plans, and information.
11 Knowing the analyses and advice of the intelligence analysts would undoubtedly give
12 these groups and individuals an advantage or "leg up" on law enforcement the next time
13 a protest is planned. In order to effectively respond to these threats, we must be
14 confident that the information we use to prepare and plan is not released in advance of
15 the protest.

16 I declare under penalty of perjury under the laws of the State of Washington and
17 the United States of America that the foregoing is true and correct.

18 DATED this 26 day of October, 2009 at TACOMA, Washington.

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20 _____
21 Donald Ramsdell

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HONORABLE ROBERT J. BRYAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILIP CHINN,

Plaintiff,

v.

BENJAMIN BLANKENSHIP, individually and in his capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE BLANKENSHIP, and the marital community thereof, RICHARD C. PIGMON, individually and in his Official capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE PIGMON, and the Marital community thereof; MARK S. SVINTH individually and in his Official Capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE SVINTH and the Marital community thereof; JONATHAN P. PITTS, individually and in his Official capacity as a TROOPER of the WASHINGTON STATE PATROL, and JANE DOE PITTS and the Marital Community thereof; CARRIE A GORDON individually and in her Official capacity as a TROOPER of the WASHINGTON STATE PATROL and JOHN DOE GORDON and the Marital community thereof; CITY OF ABERDEEN, COUNTY OF GRAYS HARBOR, DOES 1-250,

Defendants.

NO. C 09 5119 RJB

DECLARATION OF THOMAS R. RUDD IN OPPOSITION TO MOTION TO COMPEL

NOTE ON MOTION CALENDAR:
Friday, October 30, 2009

DECLARATION OF THOMAS R. RUDD IN OPPOSITION TO MOTION TO COMPEL - 1

Cause No: C09-5119 RJB

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RIV. JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLIMPIA, WA 98508-1880
(360) 734-3480 FAX: (360) 357-3511

1 PURSUANT TO 28 U.S.C. § 1746, Thomas R. Rudd declares as follows:

2 1. I am competent to testify in all respects, and make this declaration from
3 personal knowledge.

4 2. I am a Department of the Army Civilian and Chief of the Force Protection
5 Division, Directorate of Emergency Services, Fort Lewis, Washington. I am a Force
6 Protection Specialist, Police Intelligence Officer, and the Installation Antiterrorism
7 Officer.

8 3. The Force Protection Division executes force protection, antiterrorism and
9 police intelligence operations and training and develops, coordinates, monitors, and
10 evaluates the status of the installation force protection, antiterrorism, and crime
11 prevention programs. Using information networks, we conduct daily force protection
12 information collection and analysis and generate and disseminate a variety of briefings,
13 assessments and reports. Among those are threat assessments and force protection
14 daily summaries.

15 4. These assessments and summaries all carry the marking "For Official Use
16 Only" (FOUO). Under Army Regulation 25-55, Freedom of Information Act Program,
17 information that has not been given a security classification pursuant to the criteria of
18 an Executive Order, but which may be withheld from the public for one or more of the
19 reasons cited in FOIA exemptions 2 through 9, is considered as being FOUO. The
20 assessments and summaries we generate are marked FOUO because they contain
21 internal advice, recommendations, and subjective evaluations (Exemption 5) and
22 records or information compiled for law enforcement purposes the release of which
23 could reasonably be expected to interfere with enforcement proceedings or would
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26

DECLARATION OF THOMAS R. RUDD IN
OPPOSITION TO MOTION TO COMPEL - 2

Cause No: C09-5119 RJB

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 254-3480 FAX: (360) 357-3511

1 disclose techniques and procedures for law enforcement investigations or prosecutions,
2 or would disclose guidelines for law enforcement investigations or prosecutions if such
3 disclosure could reasonably be expected to risk circumvention of the law (Exemption 7).
4 They are also marked FOUO because the information contained therein, if released to
5 the general public could reasonably be expected to endanger the life or physical safety
6 of individuals.

7
8 5. Additionally, Army Regulation 530-1, Operations Security(OPSEC), available on
9 line at <http://fas.org/irp/doddir/army/ar530-1.pdf>, at paragraph 1-5 c. (3) (e)
10 “(e), requires that FOUO be the standard marking for all unclassified products that
11 meet one or more of the exemptions of FOIA, and which if released to the public, could
12 cause harm to Army operations or personnel. Examples include but are not limited to:
13 force protection, movement and readiness data, tactics, techniques, and procedures ,
14 proprietary information and information protected by copyright, pre-decisional
15 documents, draft publications, and information concerning security systems.

16
17 6. Since February 2009, every Fort Lewis Force Protection Division FOUO or law
18 enforcement sensitive document that has been released to the public by other agencies
19 (without Force Protection Division authorization) has been posted on the internet,
20 making the information contained therein available to anyone contemplating or
21 planning a criminal, extremist, or terrorist event targeting the installation or our
22 deployment and redeployment operations. Release of these documents provides insight
23 into how Fort Lewis conducts deployment and redeployment operations, interfaces with
24 law enforcement agencies, and mitigates the most likely and most dangerous threats.
25
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DECLARATION OF THOMAS R. RUDD IN
OPPOSITION TO MOTION TO COMPEL - 3

Cause No: C09-5119 RJB

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
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(360) 754-3480 FAX: (360) 357-5311

1 These released documents, posted on the internet, provide valuable information for
2 anyone who wants to impede Army or port operations.

3 7. Release of threat assessments and force protection summaries, regardless of age,
4 provide details into the collection, processing, analysis, and reporting tactics,
5 techniques, and procedures used by the Force Protection Division. Access to these
6 threat assessments and force protection summaries would allow adversaries to identify
7 and avoid mitigation measures taken by law enforcement and security and exploit the
8 vulnerabilities addressed in these documents. Furthermore, release of these documents
9 has the potential to endanger the lives and the physical safety of the personnel involved
10 in these operations and bystanders by providing inside information to persons who may
11 wish to impede operations by violent means. Posting these assessments to the internet
12 would be an invaluable aid to an extremist or terrorist seeking to attack a port, or a
13 military convoy operating on a Washington state road. Because we use the same ports
14 and roads again and again, assessments remain valid in addressing threats specific to an
15 operation at a particular location even though the operation may be completed.

16 I declare under penalty of perjury under the laws of the State of Washington and the
17 United States of America that the foregoing is true and correct.

18 DATED this 26 day of October, 2009 at Fort Lewis, Washington.

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23 Thomas R. Rudd
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APPENDIX L

Amy Cleveland

From: Rudd, Thomas R CIV USA IMCOM [thomas.r.rudd@us.army.mil]
Sent: Wednesday, November 14, 2007 9:36 AM
To: Reeves, LTC Lydia; Johnson, Adrian L CPT MIL USA TRADOC; Hosier, Kevin G MAJ MIL USA FORSCOM; Record, Brandi L CPT MIL USA FORSCOM; Edwards, Michael G CPT MIL USA FORSCOM; Tsuber, Viktor T 1LT MIL USA FORSCOM; Bryant, Patrick E Mr CTR USA IMCOM; Chesbro, Michael E CTR USA IMCOM; Olson, Maria R SSG MIL USA FORSCOM; Rudd, Thomas R CIV USA IMCOM; Towery II, John J CIV USA IMCOM
Cc: Sanders, Rickey L CIV USA IMCOM; Ciota, Thomas D CIV USA IMCOM; Todd, Marcus C Mr CIV USA IMCOM; Tor Bjornstad; susan.pearson1@us.army.mil; Clint.Colvin@uscg.mil
Subject: Off Post Event Threat Analysis and Update 14 NOV 07.doc
Attachments: Off Post Event Threat Analysis and Update 14 NOV 07.doc

<<Off Post Event Threat Analysis and Update 14 NOV 07.doc>> Thomas R. Rudd FPS/AT Officer FP Division, Task Force Protector I Corps and Fort Lewis
253-966-6914 Cell 253-677-9752
NIPR thomas.r.rudd@conus.army.mil or @us.army.mil SIPR: ruddt@ftlewis.army.smil.mil

>>>>

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<<<<

191

Steve, This is what I mentioned the other day. I'm not sure where this was posted but it sounds like we may have some activity. Tor

From: Rudd, Thomas R CIV USA IMCOM [mailto:thomas.r.rudd@us.army.mil]
Sent: Tuesday, April 06, 2010 8:31 AM
To: Tor Bjornstad
Subject: Olympia, Washington March Against Police Violence April 8 (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: FOUO

WHERE: Grocery Outlet parking lot, corner of Harrison and Division on the Westside.

WHEN: April 8, 7:30 PM

WHAT: Meet up in the parking lot, march from Westside to downtown. Black bloc is encouraged.

As anarchists, we do not need justifications for opposing the police. Their normal operations, their exercises of state power, keep the state and capitalism functioning smoothly. Their role is that of guardians of the state, which allows commodity relations and all other forms of hierarchy to continue their wretched conquest of the earth and its inhabitants. When a cop chooses not to kill you or give you a speeding ticket, he still maintains his position of power that allows him to commit either of these actions and everything in between with no repercussions.

And as anarchists, we recognize these facts. We need not wait around for a singular event that is especially horrifying in order to orchestrate our vicious response. The day to day activities of the police should be enough incentive for us to attack these jail guards. But a response is needed more than ever when the police kill marginalized members of our community.

On March 22, police in Portland, Oregon, shot and killed a homeless man, Jack Dale Collins, after killing Aaron Campbell, an unarmed black man, only two months prior. On New Year's morning in Oakland, California, BART police shot and killed Oscar Grant while he lay on the subway ground, unarmed. And perhaps striking closest to home, Olympia police officer Paul Bakala shot and killed Jose Ramirez-Jimenez in November 15, 2008. Bakala also tasered 59 year old Stephen Edwards for allegedly shoplifting from a grocery store in November 2002. Edwards died in police handcuffs less than an hour after the incident.

Anarchists appropriately responded to all of these events, but it is important to keep the pressure up. So long as police exist and carry out these murders, we must be there to fight back.

Join us in Olympia this Thursday at 7:30 PM. We will meet up in the parking lot of Grocery Outlet on the Westside (2100 Harrison Avenue) and proceed to march downtown. Black bloc is encouraged—wear a mask!

See you in the streets.

Classification: UNCLASSIFIED

Caveats: FOUO

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HONORABLE ROBERT J. BRYAN

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

PHILIP CHINN,

Plaintiff,

v.

BENJAMIN BLANKENSHIP, individually and in his capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE BLANKENSHIP, and the marital community thereof; RICHARD C. PIGMON, individually and in his Official capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE PIGMON, and the Marital community thereof; MARK S. SVINTH individually and in his Official Capacity as a TROOPER of the WASHINGTON STATE PATROL and JANE DOE SVINTH and the Marital community thereof; JONATHAN P. PITTS, individually and in his Official capacity as a TROOPER of the WASHINGTON STATE PATROL, and JANE DOE PITTS and the Marital Community thereof; CARRIE A GORDON individually and in her Official capacity as a TROOPER of the WASHINGTON STATE PATROL and JOHN DOE GORDON and the Marital community thereof; CITY OF ABERDEEN, COUNTY OF GRAYS HARBOR, DOES 1-250,

Defendants.

NO. C 09 5119 RJB

DECLARATION OF ROBERT H. TORGERSON IN OPPOSITION TO MOTION TO COMPEL

**NOTE ON MOTION CALENDAR:
Friday, October 30, 2009**

DECLARATION OF ROBERT H. TORGERSON IN
OPPOSITION TO MOTION TO COMPEL - 1

Cause No: C09-5119 RJB

*LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.*
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511

1 PURSUANT TO 28 U.S.C. § 1746, Robert H. Torgerson declares as follows:

2 1. I am competent to testify in all respects, and make this declaration from
3 personal knowledge.

4 2. I am the Chief of Police for the City of Aberdeen Police Department. As the
5 Chief of Police I am responsible for planning, organizing and directing all functions of
6 the Police Department to protect life and property through law enforcement and crime
7 prevention activities. I am responsible for the Department's overall vision, long range
8 planning, community partnerships and information technology, as well as overall police
9 department leadership.

10 3. On Thursday April 11, 2007, at a meeting at the Port of Grays Harbor with the
11 Military, Port of Grays Harbor officials, and other persons associated with various
12 United States government agencies, we were advised of an upcoming deployment of
13 military "assets" that was to include helicopters and rolling stock from Fort Lewis,
14 Washington to the Port of Grays Harbor where they would be loaded on a ship bound
15 for Iraq.

16 4. We knew through the media of the recent, sometimes extremely unruly, anti-
17 war protests at the Ports of Olympia and Tacoma and we believed that, at a minimum,
18 we should expect similar actions in Aberdeen. But, we believed it was likely that even
19 more disruptive actions than were seen in those cities should be expected since
20 intelligence information supplied to us by the military indicated that the protest groups
21 wanted to "ramp up" their activities at each new military deployment. We were told that
22 as soon as word got out that the military was coming to the Port of Grays Harbor, the
23 protest groups would start doing surveillance in our area looking for ways to cause as
24 many problems as possible for the military and the community.
25
26

DECLARATION OF ROBERT H. TORGERSON IN
OPPOSITION TO MOTION TO COMPEL - 2

Cause No: CO9-5119 RJB

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511

1 5. The number of protestors that would come to Aberdeen was not known, but from
2 indications we were getting from other agencies that have been involved with the same
3 anti-war protest groups, we expected a potentially large turnout. These groups ranged
4 from the sign carrying peaceful protestors trying to get their message across, to the
5 Anarchist, whose reputation for destructive behavior is well documented. Tactics used
6 in previous demonstrations were varied and we realized that we needed to be prepared
7 for all possible scenarios. We were aware of a message posted on the internet by one of
8 the anticipated attendee protesters, with read in part:

10 Come help us put a wrench up their @\$%. Two months after the military came
11 through the port of Tacoma, those suckers are at it again, this time using the small
12 port of Aberdeen, Washington. We've pushed them away from Olympia and
13 Tacoma and if we get it together we can make them never want to use the port of
14 Aberdeen again. . . . The cops have nicely set up a free speech zone for us which we
15 should all kindly ignore. We are in a much better location than in Tacoma. The port
16 is pressed up against neighborhoods (exactly on (sic) block away) and we are not
17 trapped in a wire cage, giving us a lot more to work with.

18 Based upon all of the information we were receiving, we established the mind-set of
19 prepare for the worst and hope for the best.

20 6. We were aware of traditional demonstration tactics by which protestors draw
21 attention to their causes, including marches, banners, and forms of passive resistance
22 such as sit-ins. Many of the protestors that we witnessed on the news in Tacoma and
23 Olympia engaged in more aggressive tactics that included vandalism, physical
24 harassment of police officers, trespassing, and the formation of human chains or shields
25 using makeshift barricade devices. Projectiles (bottles or rocks) were also used. Some
26 of the protest groups in Tacoma and Olympia used tactics that created a climate of
disorder, blocked access to target sites, drew large numbers of police officers to a

1 specific location in order to weaken security at other locations, swarmed officers
2 attempted to make arrests, obstructed traffic, and generally intimidated others.

3 7. Other than the Weyerhaeuser strike in the 1980's, in the last 30 years the
4 Aberdeen Police Department has had little experience with protest groups. We were
5 concerned that a protest similar to Olympia or Tacoma would very quickly overwhelm
6 our resources. As an example, we knew that Tacoma, with a police department several
7 times larger than the Aberdeen Police Department, received assistance from 31
8 different agencies to control the anti-war protestors there. At one point during their
9 protest Tacoma had over 200 officers deployed. We do not have 200 officers in all of
10 Grays Harbor County. It was not hard to determine that assistance from outside,
11 experienced agencies was vital for a successful operation. Many out-of-county agencies
12 with experience dealing with protestors were contacted and responded by providing
13 assistance, including the Washington State Patrol, King County Sheriffs Office, Tacoma
14 Police Department, Seattle Police Department, United States Coast Guard, and Stafford
15 Creek Corrections. The Thurston County Sheriff's Office was also available to respond
16 if needed. We also received assistance from other agencies within the county, including
17 the Grays Harbor County Sheriff's Office, the Cosmopolis Police Department, the
18 Montesano Police Department, the McCleary Police Department and the Elma Police
19 Department.
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23 8. Throughout this event daily intelligence information was supplied by the U.S.
24 Army and Coast Guard, among others, regarding information they had received through
25 their sources about planned activities by some of the protest groups that had
26 participated in disruptive behavior at the Ports of Olympia and Tacoma. This

1 information was very valuable for planning and operations purposes and gave us some
2 advance warning of what type of protest we could expect.

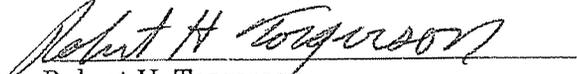
3 9. Daily Force Protection Updates received from the Army included the following
4 warning:

5 Please find attached the Fort Lewis daily force protection update. This document is
6 FOR OFFICIAL USE ONLY and intended for Force Protection and Law
7 Enforcement personnel only. You may communicate contents in the summary
8 within your organization, but if you wish to distribute outside of this community,
9 contact the Fort Lewis FP Fusion Cell at the points of contact below.

9 Army threat assessments and updates and other intelligence documents received from
10 other agencies also contained confidentiality warnings. In fact, it had been made very
11 clear to us from the beginning by each of these agencies that the intelligence
12 information being supplied to us was confidential and privileged information. I believe
13 that it is highly important to protect the interests of the other agencies in these reports
14 and to protect the identity of their under-cover personnel. I strongly believe that to
15 reveal this information would both undermine the effectiveness of their operations and
16 would jeopardize the safety of their personnel. I also believe that release of information
17 they ask us to keep confidential would make these agencies less willing to assist the
18 Aberdeen Police Department in a similar fashion if the need should arise in the future.
19 For Aberdeen and other cities in similar situations, this would significantly hurt our
20 ability to provide effective law enforcement services.

21 I declare under penalty of perjury under the laws of the State of Washington and the
22 United States of America that the foregoing is true and correct.

23 DATED this 26 day of October, 2009 at Aberdeen, Washington.

24 
25 Robert H. Torgerson

26 DECLARATION OF ROBERT H. TORGERSON IN
OPPOSITION TO MOTION TO COMPEL - 5

Cause No: C09-5119 RJB

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
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APPENDIX M

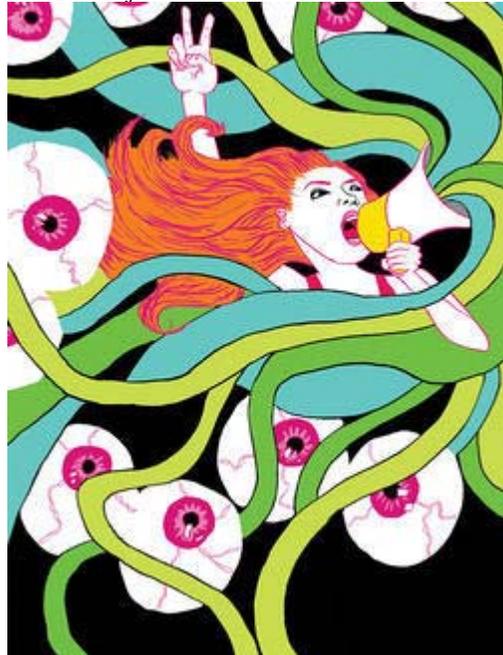
Watching the Protesters

These spies may have known too much.

By Rick Anderson

published: June 09, 2010

Ana Benaroya



The monitoring, and arrests, of local antiwar demonstrators may have crossed the legal line.

Zoltán Grossman



Blocking Army vehicles at the Port of Olympia in 2007.

Steven Miller



Hildes, an attorney who sometimes joins the protests too.

Phil Chinn's Ford Taurus moved along with the traffic on Highway 12, heading west in Grays Harbor County and beneath the Devonshire Overpass, where Washington State Patrol trooper Ben Blankenship was waiting. Blankenship put his cruiser in gear and moved down to the four-lane highway, pulling in behind Chinn's vehicle. Within a few miles, he hit his emergency lights. Chinn pulled over. It was May 6, 2007, early afternoon, the beginning of what the state patrol considers a routine traffic stop, but one that would cost taxpayers a half-million dollars.

A student at The Evergreen State College in Olympia, Chinn and four friends were en route to Aberdeen for a second day of protests against the United States' wars in Iraq and Afghanistan. They considered themselves anarchists in the Tiananmen Square mold, protesters in a peace movement called Port Militarization Resistance. It comprised mostly Olympia and Tacoma members of revived historic protest groups—Students for a Democratic Society (SDS) and the Wobblies, among others. Many were students at idealistic Evergreen, where the curriculum includes Imperialism, Marxist Theory, and Alternatives to Capitalism.

Beginning in 2006, protesters hoisted antiwar signs, marched arm-in-arm in the streets, and engaged in acts of civil disobedience, which were rewarded with streams of pepper spray and drag-away arrests. They attached their own locks to military gates and sat down in front of the chrome bumpers of Army semis loaded with war machinery. It could be exhilarating. After one demonstration, a 15-hour standoff at the Port of Olympia in 2007, Chinn wrote down his fond recollections:

The most vivid memory in my mind at the moment is huddling under a tarp, in a makeshift tent at 3:00 AM in the pouring rain. I remember being soaked to the bone, drinking hot tea with a few unfamiliar faces. We had constructed the tent out of a tarp and a barricade, which was blocking the street on two sides... We had held the road for nearly 12 hours at that point, with another barricade at the main entrance to the port blocking off every path that military vehicles and equipment could be driven down. Somewhere, between the rain and the cold wind, was a sense of joy. We had turned back police from our

barricades, and we were going to maintain them as long as we could. While in most other situations the chant "Whose port? Our port!" would be little more than wishful thinking, for a while, it was true.

Impeded by the activists in sending its convoys to and from the ports of Olympia and Tacoma, the Army was forced to launch Plan C: shipping Fort Lewis Stryker vehicles and other heavy equipment out of Grays Harbor, about five miles from where Chinn had just been pulled over.

Trooper Blankenship came to the Taurus' window. In his mirror, Chinn could see other state patrol vehicles pulling onto the highway shoulder, along with a Grays Harbor County sheriff's deputy. As Chinn, now 22, recalled in a recent interview, Blankenship asked if Chinn knew how fast he was going. The speed limit, 55, Chinn said. No, the trooper said, he'd been doing 53, and was hitting his brakes erratically.

Chinn was asked to step out of the car and take a sobriety test. Blankenship would later claim Chinn's eyes were bloodshot and that he had white spots on his tongue, suggesting he was under the influence of drugs, likely marijuana. Chinn performed the coordination tests successfully, he recalls, but wobbled a bit on one leg due to an ear infection. That was enough for Blankenship: Chinn was arrested for DUI and put in the trooper's car.

That's when Chinn noticed, on the trooper's dashboard, a computer printout with a picture of Chinn's car—actually, his parents' vehicle, a Ford Explorer. He'd been driving it the day before. Today he was driving his Taurus. Chinn suddenly realized this was hardly a routine stop: They'd been looking for him, in either car.

Unbeknownst to Chinn and others at the time, Port protesters had a double agent in their ranks. He went by the name John Jacobs and identified himself to fellow demonstrators as a civilian employee at Fort Lewis. When he joined the movement in early 2007, he offered to provide the inside scoop on Fort operations, and over the next two years would prove a trusted, loyal anarchist. He was given access to the activists' confidential communications, and told his new friends he wanted to start his own faction of war resisters.

Most of his inside information, it turns out, was flowing the other way, according to interviews, court documents, and public records reviewed by *Seattle Weekly*. He was indeed a civilian employee at the fort—in its Army Force Protection intelligence unit. His true name was John Towery, and his mission was to spy on the protesters from within.

While posing as both sympathizer and faithful organizer, Towery secretly communicated with military and law-enforcement agencies throughout Western Washington. He tipped off the Army about some of the same demonstrations he was helping to coordinate, and at times gave local police play-by-play details on demonstrators' movements. Protesters believe that collaboration violated federal law.

The state patrol denies activists' claims that political motives were behind the arrest of Phil Chinn. WSP spokesperson Bob Calkins says the patrol made the stop simply because its trooper witnessed a traffic violation. But he concedes the patrol had received a request that day from Aberdeen police to locate "three known anarchists" who were traveling in Chinn's car.

A Grays Harbor County police task force had been spying on Chinn and his friends in Olympia that morning, Aberdeen police tell the *Weekly*. After seeing Chinn load up his Taurus at a carpooling site, the task force requested that the patrol report the car's location on the highway so Aberdeen

police could pick up the trail once Chinn entered the city. (Aberdeen cops were keeping close watch on demonstrators, including trailing them around town.) But, says Aberdeen deputy chief Dave Timmons, his department "did not ask the Washington State Patrol to stop the vehicle or question or arrest its occupants."

As for the photo of Chinn's parents' vehicle, WSP's Calkins says he doesn't know how the officers obtained it. Aberdeen says it did not provide photos with its request.

Taken to jail in Montesano—a timber town watched over by a picturesque county courthouse on the hill—Chinn, who has no criminal record, later posted bail and was released. He arrived late for the Port protest. Though lab results clearly showed he had not been driving under the influence of drugs or alcohol, Chinn's DUI was left hanging in the air for three months before charges were dismissed.

Using information belatedly discovered in a records request, along with other evidence assembled by his attorney, Larry Hildes, Chinn filed a federal civil lawsuit last year for false arrest. After a year of fighting the legal action, law enforcement caved last month. To settle Chinn's claims of harassment and false arrest, the state patrol agreed to pay \$109,000, while Grays Harbor County and the city of Aberdeen each will pay \$30,000. The three entities will also pay Chinn's legal fees, estimated at around \$375,000.

The patrol stands by its arrest, claiming it was justified. "It cost less to settle than go to court," says Calkins, "where a jury, with 20/20 hindsight, might agree with Chinn." Responds Chinn: "It was cheaper to settle because there was no question it was a false arrest."

By settling, the agencies did not have to reveal details of the intelligence network that aided the stop. Those details could expose a broader spying operation, says Hildes. He is now trying anew to pry loose those sensitive police and military documents with another federal lawsuit, filed in January on behalf of other protesters. Hildes alleges the Army's infiltration of the Port resistance group and its military intelligence—sharing with local cops violates the federal Posse Comitatus Act, which bars the military from undertaking any unauthorized role in local law enforcement.

The Army says it is currently investigating whether the actions of its double agent violated the law or military policy. But the service appears to have anticipated and prepared for such lawsuits. A new how-to manual, issued Army-wide to its military police and intelligence operatives, offers advice on how to avoid violating the federal act, citing one of the Western Washington protests as an example. It concludes that such spy activities can be justified.

To Hildes, a Bellingham attorney working with the Seattle office of ACLU of Washington, the arrests of Chinn and others have helped expose the tip of a nationwide effort by police and the military to illegally spy on and preemptively arrest peaceful opponents of America's wars—not unlike the illegal spying on Vietnam-era protesters and (as the ACLU has documented in recent years) similar spying on antiwar groups after the Sept. 11 attacks.

"It's an ongoing thing," says Hildes matter-of-factly. He's a member of the National Lawyers Guild, and specializes in civil and human-rights cases—an activist attorney who sometimes takes part in demonstrations himself. He suspects the intelligence net stretches from local police stations to military spy ops across the U.S. After all, "Why did the Air Force in New Jersey and the Capitol Police in D.C. want to know about some college kids in Olympia?" he asks, referring to e-mails that are part of another of his court cases. And what, really, goes on behind the doors of those offices in downtown Seattle that some are calling Spy Central?

What until recently was known—at least in intelligence circles—as the Washington Joint Analytical Center was renamed a year ago the Washington State Fusion Center. It is the state patrol's intelligence nerve center, housed in the Abraham Lincoln Building on Third Avenue in Seattle, on the floor below the FBI's Seattle Field Office. The Center is one of roughly 75 fusion centers across the U.S., the brainchild of the Bush administration and organized by the Department of Homeland Security and the Department of Justice in the wake of the Sept. 11 attacks. The intention was to collect and distribute civilian, industrial, and military intelligence to keep America safe from criminals and terrorists, replacing the older, less-centralized intelligence ops of local communities.

To critics, the fusion centers represent a de facto national intelligence agency. Opponents worry about privacy invasions and political spying, and suspect that local intel could be shared far and wide, such as with the nation's biggest spy operation, the National Security Agency (which has a secure listening facility at the Army's Yakima Firing Center and a massive intel-intercept antenna farm on a mesa in Brewster, Okanogan County).

In an interview, fusion-center critic Bruce Fein, a D.C. constitutional lawyer and think-tank analyst, says the apparently false arrest of Phil Chinn "was not an aberration. It exposes the larger problem with fusion centers. These kinds of efforts to spy on First Amendment activists is a chronic problem with them. Their mission is to ascertain who might harbor resentment against the U.S. government and express it openly. Ordinarily we call that democracy."

According to the Fusion Center's charter, its personnel are to operate "in accordance with" the U.S. and Washington state constitutions—"as applicable." "The laws on privacy prohibit us from collecting info on the activities of individual protesters," says the Center's spokesperson, state patrol Lt. Randy Drake.

More specifically, says patrol headquarters spokesperson Calkins, the Fusion Center played no role in the Chinn case. "They [Center officials] have been through the records and say they did not handle that data," Calkins says.

The Center's operations are not open to public inspection, but Drake says there's not much to see. "It's not like the movies or TV," he says of the physical layout. No war-room frenzy or dazzling big-screen monitors with flashy graphics. Just "Cubicles and people at computers," he says. "Office space. Not very exciting." Funded with both federal and local money, the Center's 17 employees, says Drake, scour the Internet and sift through e-mails and law-enforcement tips on "suspicious activities, that type of thing."

Through a series of security corridors, Center employees can also reach the nearby offices of the Puget Sound Joint Terrorism Task Force and the regional FBI Field Intelligence Group. Besides state investigators and analysts, Seattle Police and the King County Sheriff also have full-time intelligence officers at the Fusion Center. Almost every city and county law-enforcement agency in the state is linked to the Center through the secure State Intelligence Network. Operatives also have access to the FBI computer system, and, depending on their security-clearance level and the type of case, can access intelligence from around the globe.

Seattle's Fusion Center is "a model" for other centers, according to *Security Management* magazine, an industry publication, which reports that Boeing was seeking to place a full-time company intelligence analyst at the Center. Starbucks, Amazon, and Alaska Airlines "have also expressed interest" in working with the Center, the magazine says.

That's a proposal yet to be worked out, say officials. But Richard Hovel, Boeing's senior advisor on aviation and homeland security, told a U.S. House subcommittee last year that "Hopefully, this [Seattle plan] will be the first of many similar efforts across the nation that will establish a collaborative partnership between the public sector and industry, and protect our critical infrastructure more effectively and expeditiously."

Hildes, the demonstrators' attorney, is most worried about the military's ties to the Fusion Center and local police, a bond that seems to be expanding. As *Federal Computer Week* reported last fall, "Some non-federal officials with the necessary clearances who work at intelligence fusion centers around the country will soon have limited access to classified terrorism-related information that resides in the Defense Department's classified network." State, local, and even Native American tribal officials will be able to see pre-approved data on the Secret Internet Protocol Router Network, the magazine reported.

Dennis Blair, President Obama's former intelligence czar, felt the military should share *more* of its secrets with federal and corporate entities. The government's 16-agency intelligence community (with a collective \$75 billion budget and 200,000 worldwide operatives) needs to get over "this old distinction between military and nonmilitary intelligence," as he put it. But that was before his forced resignation last month, due apparently to several intelligence failures and attempted terror bombings, including the Times Square incident last month and the December "Underwear Bomber" arrest.

The problem, says critic Fein, is that fusion centers tend to operate independently, with little review and oversight. "They can just go gather information on anyone, spying on anything unconventional or unorthodox. And to what end? There's not a single instance I'm aware of where a center has led to the prosecution of any terrorist."

One of the few known intel operations undertaken by the Fusion Center in Seattle led to a memorable 2007 manhunt for two Arab-looking men spotted on a Washington State ferry. They were reported to police as "looking suspicious" and taking pictures. FBI agents and analysts from the Fusion Center worked together on the case and turned up photos of the men taken by a ferry skipper. The FBI and the Fusion Center issued the photos with a press release seeking the public's help in identifying the men.

Nine months later, the FBI announced the men had gone to an unidentified U.S. embassy in Europe to clear things up. They were, the FBI said, nothing more than European business consultants who took a ferry ride while visiting Seattle. In a news release, the FBI and the Fusion Center thanked "the many media organizations worldwide that published the photographs and ultimately played a prominent role in resolving this matter..." The agencies did not reveal how much money and effort had been expended on the global manhunt.

The Army also isn't saying much about its Fort Lewis-based double agent, John Towery, though it confirms he was employed as an intelligence analyst who infiltrated the Port resisters, and that he continues to work for the Army. He was outed last year after protesters obtained public documents from the City of Olympia that contained his name and some of the e-mails he had sent. The Army declined to make him available for an interview.

After his role was exposed, Towery did agree to a short meeting with two Olympia protest leaders, Brendan Dunn and Drew Hendricks, apparently to justify his role. He confirmed he was a spy, says Dunn, and admitted he reported to a network of local police and military intelligence officers.

Hendricks, who has spent the past few years delving into U.S. spy nets, says in an e-mail that the experience with Towery shows him that today's intelligence gathering is "less obvious, more pervasive, [with] fewer conspirators," but the result is familiar: "We are right where we were in the 1960s with domestic military spying."

Both Seattle Fusion Center spokesperson Drake and WSP spokesperson Calkins say that to their knowledge the Center was not involved in the Army's possibly illegal efforts to infiltrate and spy upon protesters. But copies of e-mails obtained by protesters through the Olympia public-records request show that the Army passed intelligence about demonstrators to local law-enforcement agencies that are part of the Fusion Center operation, and attorney Hildes says his research indicates the intel passed through the Center's network.

For example, Tacoma and Pierce County law-enforcement officials—whose agencies are part of the Center's nine regional intelligence systems—received messages in March 2007 from Tom Rudd, Towery's boss at the Fort Lewis Force Protection Center. The heavily redacted documents include instant messages about protesters moving toward a Port of Tacoma demonstration ("You have some of the more aggressive protesters involved, which means Anarchists and SDS folks to say the least," reads one).

Towery is among the e-mail recipients; he also apparently was passing along info, perhaps from the scene. "Per Towery," says another e-mail whose sender's name is blacked out but whose recipients included Rudd, Tacoma intelligence officers, and the Coast Guard, "pro-war counter protesters enroute to POT [Port of Tacoma]. Numbers unknown."

The Olympian newspaper last year obtained additional e-mails from the City of Olympia (also part of the Fusion Center regional network) that confirm Towery and Olympia police were sent a "threat assessment" by Fort Lewis' Force Protection unit, outlining demonstrators' plans for a November 2007 protest and how it could be countered.

"As of 900 [9 a.m.], 14 Nov.," one e-mail reads, "protesters continue surveillance of the port and appear to be focused on determining rail movement plans. Protesters are comprised of two main groups; the Olympia Port Militarization (PMR) and the self-described anarchists calling themselves the Port Liberation Front (PLF), and various other groups, and individuals who align themselves with these groups or take individual actions based on their beliefs."

The Army seemed to know a lot about the protest plans. If demonstrators launch their blockade, the e-mail said, "tactics will continue to include the use of makeshift barricades, 'sleeping dragons' (chains protected by plastic pipes), and more decentralized staging at intersections along viable routes from port to I-5."

To Hildes and the ACLU, that e-mail indicates that the Army, likely relying on the intelligence of its double agent, was directly involved in local law-enforcement activities in violation of the Posse Comitatus Act. What's more, "Unless there is reasonable suspicion of criminal activity," says Randy Tyler of the Seattle ACLU office, such spying "violates the protesters' First Amendment rights."

It has happened before, Tyler notes. In 2005, NBC News reported that the Pentagon had added the names of antiwar protesters to a database of suspected terrorists; the Pentagon called it a "mistake" and apologized. In 2007, an ACLU study showed that the Pentagon had monitored at least 186 anti-military protests in the United States in recent years and had collected extensive information on Americans in a terrorist database. The Bush administration was justifying the "unchecked surveillance" as a national security measure, the ACLU said.

Tyler says the ACLU has now launched a study of government surveillance in Washington state, intending to determine the extent of information-sharing among law-enforcement agencies, the federal government, the private sector, and the military.

The spying wasn't merely a local op, as the document dump from Olympia shows. Police and military agencies across the nation wanted to know about the protesters.

In a 2008 e-mail to an Olympia police officer, Thomas Glapion, Chief of Investigations and Intelligence at New Jersey's McGuire Air Force Base, wrote: "You are now part of my Intel network. I'm still looking at possible protests by the PMR SDS MDS and other left wing anti war groups so any Intel you have would be appreciated...In return if you need anything from the Armed Forces I will try to help you as well."

Also in 2008, Andrew Pecher of the U.S. Capitol Police Intelligence Investigations Section in Washington, D.C., wrote to Olympia police for "any information that you have" on a conference of antiwar protesters held at Evergreen.

Fort Lewis' tactics in combating protests have apparently inspired the rest of the Army to follow the base's lead. A confidential 60-page 2009 manual from the Army Military Police School, posted online by Wikileaks, appears to guide operatives around the Posse Comitatus Act. As a kind of hybrid military/police operation, the Army's Force Protection units can gather "institutional knowledge of threat, physical and social environs, as well as [maintain] long-term relationships with local and federal law enforcement agencies," the manual states.

As an example, the manual cites a scenario that seemed to come right from the Olympia protest, describing the movement of 300 Stryker Brigade vehicles across eight law-enforcement jurisdictions. "The fusion cell [the intel unit of the Force Protection operation] coordinated police information, intelligence and civilian security with over 22 local, federal, and DoD agencies...The coordinated effort gave law enforcement agencies the knowledge to identify and prevent disruptive actions by violent protesters. The operation was considered by Corps leadership to be a watershed event..."

There's no mention that the intel for such a move might have come from a double agent the Fort had placed behind enemy lines. But Hildes thinks the manual confirms some of his suspicions about how deeply involved the Army was with law enforcement. It was such intelligence, he adds, that led to the bizarre arrest of some demonstrators for "future crimes."

In 2007, 41 protesters, mostly women, were gathering and planning a protest on the roadside near a military staging area when they were busted by Olympia police. Police, assuming the group was going to block the convoy, moved in, arrested them all, and bused them to jail for "attempted" disorderly conduct. Hildes and the ACLU filed suit this year against the Army and the City of Olympia for allegedly violating their civil rights. (A similar lawsuit against Tacoma police was filed last September.) Hildes thinks the women were prematurely arrested because Towery had told police what they'd planned to do—peacefully block and protest the war convoy. The Army and police mission was undertaken, says Hildes, because the agencies "did not like the content of the speech involved."

Of course, government agencies routinely investigate and share info about potential terror threats, Hildes allows. But, he argues, the Olympia and Tacoma demonstrators have an established record of nonviolent protests. "When you consider how many agencies are involved in watching and infiltrating—federal, state, county, local—you have more spies than organizers," he says. He hopes

to determine the true extent of that involvement by convincing the court to order the agencies and the military to reveal more background documents in the latest civil suit, in which Towery is also a defendant.

It was just such a request that apparently prompted a conclusion to the Chinn case.

The U.S. Attorney's office in Seattle—which was not party to the suit—stepped in late last year and claimed local police and military documents were secret. Assistant U.S. Attorney Brian Kipnis told the federal court that "at least some of the disputed records contain 'Sensitive Security Information'" and their release is restricted. Which records those were, however, had not yet been decided, added Kipnis. But, he said, "We will certainly advise the court immediately when a decision has been reached."

U.S. District Court Judge Robert Bryan didn't intend to wait, however. He ordered the police agencies to produce the records requested by Hildes, and told Kipnis the U.S. might have to do the same "in the interest of justice." Settlement talks quickly began.

Last week, Chinn was still awaiting his check. But he will eventually walk away with about \$170,000, before taxes. Still, who won? Though the Grays Harbor charges were dropped, Chinn has a DUI arrest etched on his state driving record. He hopes that won't come up as he continues to look for a job around Olympia, after graduating last year from Evergreen. He's also less active in the protests, which have shifted back to the Port of Tacoma, where turnouts have fallen off.

Tacoma police have been more successful in cordoning off the area, keeping demonstrators at bay. "It's difficult," says Chinn, "to have a protest anymore."

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APPENDIX N

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Published April 10, 2010

31 demonstrators arrested

JEREMY PAWLOSKI; Staff writer

OLYMPIA - A woman arrested on suspicion of kicking a police officer in the groin during Thursday night's anti-police rally downtown told an officer, "The last time an officer said I assaulted him the charge got dismissed, no contest. My mom has a lot of money, my friend," court papers state.

The woman, Margaret Belknap, 22, and Paul French, 25, were ordered held at the Thurston County Jail with bail set at \$2,500 during a court hearing Friday, a day after their arrests on suspicion of third-degree felony assault of a police officer. Belknap has denied wrongdoing.

According to court papers:

French is accused of hitting an Olympia police officer in the face, and Belknap is accused of kicking an Olympia officer in the "upper right inside thigh near his groin" and kicking him in the knee while wearing black "military type" boots.

French is scheduled to walk during graduation ceremonies for students at The Evergreen State College in June. He has worked off and on as a land surveyor.

Belknap is a former Evergreen student. She was arrested in San Francisco in 2009 on three counts of third-degree assault, but the case was dismissed after she completed a diversion program.

Twenty-nine other people were arrested on suspicion of misdemeanor crimes during Thursday night's anti-police march in downtown Olympia.

Jami Williams, 20, was arrested on suspicion of misdemeanor assault and vandalism after allegedly assaulting Tony Overman, a photographer for The Olympian. Overman said protesters spray-painted his face and camera as he took a photo of someone spray-painting a street sign. He said protesters also shoved him, wrested control of his cell phone and attempted to smash it on the ground.

The 28 other protesters were arrested on suspicion of misdemeanor riot.

Everyone arrested on suspicion of misdemeanors had been released from the Olympia Municipal Jail as of Friday morning.

The march consisted of a large group of people clad in black with their faces covered in hoods and scarves. Some protesters wear such clothing so police won't recognize them. The march began on Olympia's west side and continued down the Fourth Avenue Bridge to downtown Olympia.

The purpose of the march was to protest alleged police brutality, including recent officer-involved shootings in Portland. Leaflets passed out during the protest also cited the 2008 fatal shooting of Jose Ramirez-Jimenez by Olympia police officers as a reason for the protest.

The Thurston County Prosecuting Attorney's Office deemed Ramirez-Jimenez's fatal shooting justified. According to police reports, the officers involved in the shooting described Ramirez-Jimenez reaching for something in his vehicle during a standoff. They also said Ramirez-Jimenez ignored their orders to show his hands. Ramirez-Jimenez was fatally shot at the end of a high-speed police chase in Lacey. Police were trying to pull over Ramirez-Jimenez's vehicle because it matched a vehicle used in a drive-by shooting of a pedestrian earlier in the evening.

After that shooting, police found methamphetamine and a 9 mm semi-automatic pistol in Ramirez-Jimenez's vehicle. Forensic tests later identified the pistol as the firearm used in the drive-by shooting of Joshua Eden earlier that evening. Eden said in an interview last year that he has a 13-inch steel rod in his leg as a result of the shooting.

Olympia Police Lt. Ray Holmes said police would not have interrupted Thursday night's protest had it remained peaceful. But there were numerous reports that protesters were breaking the law by throwing bottles and rocks at buildings, spray-painting property and dragging trash containers into the streets, blocking traffic, he said.

Police blocked the march at Adams and State streets about 9:15 p.m. Thursday and arrested some of the protesters.

Police reports obtained by The Olympian contain more details about the protest and the response by Olympia police. According to the reports:

- About 8:45 p.m., one protester was witnessed spray-painting "Kill Cops" on a large utility transformer box owned by Puget Sound Energy after passing the Heritage Park fountain.
- A citizen called 911 about 8:50 p.m. to report that members of the group spray-painted the wooden front doors of the New Caledonia building at 116 Fifth Ave. The building houses a police substation. An officer observed an anarchy symbol and the words "(expletive) cops" spray-painted on the door.
- Also about 8:50 p.m., some protesters threw a rock at First Citizens Bank on Fifth Avenue, breaking a window.
- Officers saw protesters throwing rocks at the Manium building at 421 Fourth Ave., breaking windows there.
- Police blocked the group at State and Adams. A skirmish broke out when police tried to detain Williams, "who had already been identified as the suspect responsible for assaulting Tony Overman."
- Police collected several cameras and a digital recorder while booking the suspects at the Olympia Municipal Jail. Many of the items "displayed stickers indicating they were the property of The Evergreen State College" and were "seized as possible evidence."

In addition to the two people arrested on suspicion of felony assault and the woman arrested on suspicion of misdemeanor assault, the following were arrested on suspicion of misdemeanor riot during:

Jami Williams, 20; Tom McGuire, 21; Peter McCoy, 24; Matthew Duran, 21; Gabriel Sisson, 21; Danielle Shook, 25; Alex Barton, 20; Claire Price, 23; Calvin Evans, 21; William Sclabassi, 20; Nora McKinnon, 20; Ruth Kodish-Esklund, 20; Martha Henderson, age unavailable; Lee Duffy, 25; Emily Weisberg, 19; Ashley Fleming, 20; Vanessa Lombardi, 23; Sarah Still, 21; Rebecca Tuttle, 23; Kristy Keeley, 21; Patrick Gould, 23;

Matthew Pfeifer, 20; Alexander Bryan, 20; Steven Jablonski, 21; William Turner, 20; Eric Sullivan, 25; Kamuran Chabuk, 24; Bonnie Weaver, 21.

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APPENDIX O



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Superior Court Case Summary

Court: Thurston Superior
Case Number: 10-1-00528-9

Sub	Docket Date	Docket Code	Docket Description	Misc Info
-	04-09-2010	NOTE FOR CALENDAR ACTION	Note For Calendar Pc	04-09-2010PR
1	04-09-2010	PRE-TRIAL REPORT	Pre-trial Report	
2	04-09-2010	PRELIMINARY APPEARANCE JDG0002	Preliminary Appearance Judge Paula Casey Cc Dayton Cr Beswick	
3	04-09-2010	AFFIDAVIT OF INDIGENCY	Affidavit Of Indigency	
4	04-09-2010	ORD DETERMIN PROBABLE CAUSE	Ord Determin Probable Cause	
5	04-09-2010	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
6	04-09-2010	TRUST RCVD-BOND	Trust Rcvd-bond	2500.00
7	04-09-2010	AFFIDAVIT/DECLARATION PROB CAUSE	Affidavit/declaration Prob Cause	
8	04-09-2010	AGREEMENT	Agreement Bail Collection	
9	04-12-2010	INFORMATION	Information	
10	04-12-2010	NOTICE OF HEARING ACTION	Notice Of Hearing Arraignment	04-20-20102A
11	04-14-2010	DISPOSITION REPORT RCV'D	Disposition Report Rcv'd	
12	04-20-2010	INITIAL ARRAIGNMENT JDG0006	Initial Arraignment Judge Christine A. Pomeroy Cc Williams Cr Beswick	
13	04-20-2010	REQUEST FOR DISCOVERY	Request For Discovery	
14	04-20-2010	NOTICE OF APPEARANCE	Notice Of Appearance	
15	04-20-2010	ORDER SETTING TRIAL DATE ACTION	Order Setting Trial Date 90 Day 04-20-10	07-12-2010
-	04-20-2010	NOTE FOR CALENDAR ACTION	Note For Calendar Pretrial/omnibus	05-19-20103A
-	04-20-2010	NOTE FOR CALENDAR ACTION	Note For Calendar Status Conference	07-07-2010
16	04-23-2010	NOTICE OF HEARING ACTION	Notice Of Hearing Allow Travel	04-29-2010A1
17	04-28-2010	LETTER	Letter From Defendants Mother	

About Dockets

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Thurston Superior
2000 Lakeridge Dr SW, Bldg 2
Olympia, WA 98502
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360-786-5560[Phone]
360-754-4060[Fax]
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Disclaimer

What is this website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.

How can I obtain the complete court record?

You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

Click [here](#) for a court directory

18	04-29-2010	MOTION HEARING JDG0006	Motion Hearing Judge Christine A. Pomeroy Cc Scott Cr Beswick		with information on how to contact every court in the state.
19	04-29-2010	ORDER TO CONTINUE OMNIBUS HRG ACTION	Order To Continue Omnibus Hrg Pretrial Omnibus-1	05-24-20101A	Can I find the outcome of a case on this website? No. You must consult the local or appeals court record.
20	04-29-2010	ORDER GRANTING MOTION/PETITION	Order Granting Motion/petition		
21	05-19-2010	HEARING CANCELLED: COURT'S REQUEST	Hearing Cancelled: Court's Request (pomeroy) Cc Merz		How do I verify the information contained in the index? You must consult the court record to verify all information.
22	05-24-2010	MOTION HEARING JDG0007	Motion Hearing Cc Nastansky Judge Gary R. Tabor		
23	05-24-2010	ORDER TO CONTINUE OMNIBUS HRG ACTION	Order To Continue Omnibus Hrg Pretrial Omnibus-2	06-07-20101A	Can I use the index to find out someone's criminal record? No. The Washington State Patrol (WSP) maintains state criminal history record information. Click here to order criminal history information.
24	06-07-2010	MOTION HEARING JDG0006	Motion Hearing Judge Christine A. Pomeroy Cc Pittman		
25	06-07-2010	ORDER TO CONTINUE OMNIBUS HRG ACTION	Order To Continue Omnibus Hrg Pretrial Omnibus-3	06-16-20103A	
26	06-16-2010	MOTION HEARING JDG0007	Motion Hearing Judge Gary R. Tabor Cc Scott Cr Jones		Where does the information in the index come from? Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The index is maintained by the Administrative Office of the Court for the State of Washington.
27	06-16-2010	ORDER FOR CONTINUANCE: STIPULATED ACTION	Order For Continuance: Stipulated Last Td 09-23-10	08-25-2010J	
-	06-16-2010	NOTE FOR CALENDAR ACTION	Note For Calendar Pretrial/omnibus-4	07-12-20101A	
-	06-16-2010	NOTE FOR CALENDAR ACTION	Note For Calendar Status Hearing-1	08-18-2010SC	Do the government agencies that provide the information for this site and maintain this site:
28	06-23-2010	NOTICE OF APPEARANCE	Notice Of Appearance		
29	07-12-2010	MOTION HEARING JDG0006	Motion Hearing Judge Christine A. Pomeroy Cc Nastansky		▶ Guarantee that the information is accurate or complete? NO
30	07-12-2010	ORDER TO CONTINUE OMNIBUS HRG ACTION	Order To Continue Omnibus Hrg Pretrial Omnibus-5	07-26-20101A	▶ Guarantee that the information is in its most current form? NO
31	07-15-2010	STATE'S LIST OF WITNESSES	State's List Of Witnesses		▶ Guarantee the identity of any person whose name appears on these pages? NO
32	07-26-2010	MOTION HEARING JDG0006	Motion Hearing Judge Christine A. Pomeroy Cc Nastansky		▶ Assume any liability resulting from the release or use of the information? NO
33	07-26-2010	ORDER TO CONTINUE OMNIBUS HRG ACTION	Order To Continue Omnibus Hrg Pretrial Omnibus-6	08-02-20101A	
34	08-02-2010	MOTION HEARING JDG0007	Motion Hearing Judge Gary R. Tabor Cc Dayton	08-09-20101A	
		ACTION	Pretrial/omnibus-7		
35	08-02-2010	ORDER TO CONTINUE OMNIBUS HRG	Order To Continue Omnibus Hrg		
36	08-09-2010	OMNIBUS HEARING	Omnibus Hearing Cc Pittman		

		JDG0006	Judge Christine A. Pomeroy	
37	08-09-2010	OMNIBUS ORDER ACTION	Omnibus Order 3.5 Hearing	08-16-2010CA
38	08-10-2010	DEFENDANT'S LIST OF WITNESSES	Defendant's List Of Witnesses	
39	08-11-2010	OBJECTION / OPPOSITION	Objection / Opposition State	
40	08-12-2010	STATE'S LIST OF WITNESSES	State's List Of Witnesses	
41	08-16-2010	EVIDENTIARY HEARING	Evidentiary Hearing Cc Scott Cr Beswick	
		JDG0002	Judge Paula Casey	
42	08-16-2010	EXHIBIT LIST	Exhibit List	
43	08-16-2010	STIP&OR RET EXHBTS UNOPNED DEPOSTNS	Stip&or Ret Exhbts Unopned Depostns	
44	08-18-2010	STATUS CONFERENCE / HEARING JDG0007	Status Conference / Hearing Judge Gary R. Tabor Cc Nastansky Cr Beehler	08-19-2010P1
		ACTION	Show Cause Re Attorney	
45	08-19-2010	MOTION HEARING JDG0006	Motion Hearing Judge Christine A. Pomeroy Cc Woods Cr Beehler	
46	08-23-2010	VOIR DIRE ONLY HEARING APT	Voir Dire Only Hearing Actual Proceeding Time	
-	08-23-2010	JURY TRIAL	Jury Trial Cc Scott Cr Shackell	
		VIS00 APT	Visiting Judge Serko Actual Proceeding Time	
47	08-23-2010	MOTION IN LIMINE	Motion In Limine	
48	08-23-2010	PLAINTIFF'S PROPOSED INSTRUCTIONS	Plaintiff's Proposed Instructions	
49	08-23-2010	MOTION IN LIMINE	Motion In Limine	
50	08-23-2010	JURY ROLL CALL	Jury Roll Call	
51	08-23-2010	MOTION IN LIMINE	Motion In Limine	
-	08-24-2010	TRIAL MINUTES	Trial Minutes Day 2	
52	08-24-2010	ORDER ESTABLISHING COND. OF RELEASE ACTION	Order Establishing Cond. Of Release Sentencing At 3:00 W/judge Serko	08-26-2010
53	08-24-2010	WITNESS RECORD	Witness Record	
54	08-24-2010	EXHIBIT LIST	Exhibit List	
55	08-24-2010	STIP&OR RET EXHBTS UNOPNED DEPOSTNS	Stip&or Ret Exhbts Unopned Depostns	
56	08-24-2010	COURT'S INSTRUCTIONS TO JURY	Court's Instructions To Jury	
57	08-24-2010	VERDICT	Verdict Form A1	
58	08-24-2010	VERDICT	Verdict Form Aii	
59	08-24-2010	VERDICT	Verdict Form B	
60	08-24-2010	JURY PANEL	Jury Panel	
61	08-24-2010	DEFENDANT'S PROPOSED INSTRUCTIONS	Defendant's Proposed Instructions	

62	08-26-2010	SENTENCING HEARING ACTION VIS00	Sentencing Hearing Cc Scott Cr Davidson Treatment Review Visiting Judge Serko	10-29-20105A
63	08-26-2010	MEMORANDUM	Memorandum Re Sentencing	
64	08-26-2010	STATEMENT	Statement Tessa Echeverria	
65	08-26-2010	STATEMENT OF PROSECUTING ATTORNEY	Statement Of Prosecuting Attorney	
66	08-27-2010	FINDINGS OF FACT&CONCLUSIONS OF LAW	Findings Of Fact&conclusions Of Law	
-	08-27-2010	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order	
67	09-14-2010	FELONY JUDGMENT AND SENTENCE	Felony Judgment And Sentence	
68	10-29-2010	CONTINUED: PLAINTIFF/PROS REQUESTED ACTION	Continued: Plaintiff/pros Requested Treatment Review-1 Tabor Cc Nastansky	11-05-20105A
69	11-05-2010	REVIEW HEARING JDG0007	Review Hearing Judge Gary R. Tabor Cc Shackley Cr Shackell	
70	11-05-2010	ORDER ESTABLISHING COND. OF RELEASE ACTION	Order Establishing Cond. Of Release Treatment Review 8:30	11-12-20105A
71	11-12-2010	REVIEW HEARING ACTION JDG0007	Review Hearing Treatment Review Judge Gary R. Tabor Cc Merz Cr Shackell	12-03-20105A
72	11-12-2010	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
73	11-12-2010	REPORT	Report Treatment	
74	11-29-2010	NOTICE WITHDRAW & SUBSTITUT COUNSEL	Notice Withdraw & Substitut Counsel	
75	12-03-2010	REVIEW HEARING ACTION JDG0007	Review Hearing Treatment Review Cc Merz Cr Beswick Judge Gary R. Tabor	01-28-20115A
76	12-03-2010	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
77	12-08-2010	NOTICE OF HEARING ACTION	Notice Of Hearing Defer Treatment	12-16-2010MM
78	12-08-2010	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
79	12-08-2010	MOTION	Motion To Stay	
80	12-16-2010	HEARING CANCELLED: COURT'S REQUEST	Hearing Cancelled: Court's Request Tabor Cc Scott Cr Beswick	
81	01-28-2011	REVIEW HEARING ACTION JDG0007	Review Hearing Treatment Review Judge Gary R. Tabor Cc Merz Cr Jones	03-18-20115A

82	01-28-2011	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
83	03-18-2011	REVIEW HEARING JDG0007	Review Hearing Cc Dayton Cr Beehler Judge Gary R. Tabor	
84	03-18-2011	REPORT	Report Treatment	
85	03-18-2011	NOTICE OF APPEARANCE	Notice Of Appearance	
86	03-18-2011	MOTION	Motion & Memo To Vacate	
87	04-04-2011	NOTICE OF HEARING ACTION	Notice Of Hearing Motion For Ccr 7.8	04-14-2011MM
88	04-08-2011	RESPONSE	Response Pltf	
89	04-14-2011	MOTION HEARING JDG0007	Motion Hearing Judge Gary R. Tabor Cc Dayton Cr Shackell	
90	04-14-2011	NOTICE OF APPEARANCE	Notice Of Appearance	
91	04-14-2011	ORDER OF TRANSFER	Order Of Transfer	
92	04-15-2011	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed	
93	05-18-2011	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
94	05-18-2011	MOTION FOR INDIGENCY	Motion For Indigency	
95	05-18-2011	CONFIDNTL REPORT IN SEALED ENVELOPE	Confidntl Report In Sealed Envelope	
95.99	05-18-2011	AFFIDAVIT OF INDIGENCY	Affidavit Of Indigency	
96	05-18-2011	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers	
97	05-18-2011	ORDER OF INDIGENCY	Order Of Indigency	
-	05-18-2011	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order	
98	05-18-2011	LETTER	Letter To Counsel Re Designation	
99	05-18-2011	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed	
100	06-07-2011	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers	
101	06-13-2011	CLERK'S PAPERS SENT	Clerk's Papers Sent P 1-35	
102	06-13-2011	LETTER	Letter To Counsel W/ Clp Index	
103	06-15-2011	LETTER	Letter To Ct Appeal W/ 1 Vol Clp	
104	11-07-2011	COPY	Copy Ct Appeal Order 42005-8-ii	

1 Q. I'm going to show you what's been marked as State's
2 Exhibit Number 3. Take a moment and look at that.
3 Do you recognize who that is?

4 A. Yeah.

5 Q. Who is that?

6 A. That's me.

7 Q. And is the one on the -- as you're looking at it on
8 the left there, is that you as you were dressed
9 during the protest?

10 A. Yes.

11 Q. And the other one is just a booking photo?

12 A. Yes.

13 MR. JACK JONES: I'd offer State's 3.

14 MR. FERRELL: No objection, Your Honor.

15 THE COURT: 3 is admitted.

16

17 (WHEREUPON Plaintiff's Exhibit 3
18 was admitted into evidence.)
19

20

21 MR. JACK JONES: Q. And I'll show you what's
22 been admitted as State's Exhibit Number 2. Do you
23 recognize the person on the left of that one?

24 A. Yes.

25 Q. And is that Margaret?

A. Yes.

1 Q. Is that how she was dressed?

2 A. Yes.

3 Q. And she had the kerchief around her neck?

4 A. It was around her neck, yes.

Were most of the people in that protest dressed the same way?

The vast majority, minus a couple people, yeah.

MR. JACK JONES: Nothing further.

THE COURT: Redirect?

MR. FERRELL: I have nothing for redirect,
Your Honor.

THE COURT: You may step down.

10 MR. FERRELL: I'd thank and excuse the
14 witness.

15 THE COURT: You may call your next witness.

16 MR. FERRELL: Thank you, Your Honor. I would
17 call Margaret Belknap to the stand.

18
19 MARGARET BELKNAP,
20 having been duly sworn by the Court, testified as
21 follows:

22
23 DIRECT EXAMINATION

24
25 THE COURT: Mr. Ferrell.

1 Q. People getting shot with pepper balls?

2 A. Yes.

3 MR. FERRELL: I have nothing further at this
4 time, Your Honor.

5 THE COURT: Cross-examination, Mr. Jones.

6 MR. JACK JONES: Thank you, Your Honor.

7

8 CROSS-EXAMINATION

9

10 BY MR. JACK JONES: Q. Ms. Belknap, you were
11 there for an anti-police brutality protest; is that
12 correct?

13 A. Yes.

14 Q. And you started up on the west side at Harrison and
15 Division?

16 A. At the Grocery Outlet, yes.

17 Q. At the Grocery Outlet. Isn't that up there on the
18 west side by Harrison and Division?

19 A. Yes, it is.

20 Q. Okay. Good deal. And then you were with the other
21 people as they went downtown from there?

22 A. Yes.

23 Q. And most everybody was there dressed in dark
24 clothing; is that correct?

25 A. Most everybody, yes, I remember, yes.

1 Q. Yes. And did some people have on masks and have --
2 or have other things covering their face?

3 A. Their kerchiefs, yes.

4 Q. Yes. And is it fair to say that you weren't happy
5 with the police, and that's why you were protesting?

6 MR. FERRELL: Objection, relevance, Your
7 Honor.

8 THE COURT: Overruled. You may answer the
9 question.

10 THE WITNESS: I feel more that I was unhappy
11 with police actions specifically in Portland.

12 MR. JACK JONES: Q. But you weren't
13 protesting in Portland; you were protesting in
14 Olympia.

15 A. Yes.

16 Q. Why were you protesting Portland police brutality in
17 Olympia?

18 A. Well, there had been an incident the year before that
19 involved the death of Jose Ramirez-Jimenez in
20 Olympia. Also, I live in Olympia and not in
21 Portland.

22 Q. So you were upset with what you thought of as police
23 brutality in Olympia as well; isn't that correct?

24 A. Yes.

25 Q. All right. And I take it, you did not appreciate

APPENDIX P

1 defendants) the prosecutor only corrected one of the false statements, and persists in making
2 others.

3 The Talmud, one of the ancient and central texts of mainstream Judaism, teaches that
4 its followers are to “prohibit not something to others which you permit to yourself.”² More
5 recently, English proverbs from the 1600’s, cautioned against “play[ing] to one tune and
6 dance[ing] [to] another”, and warned that “[p]lain dealing is praised more than practiced.”³
7 Both state and federal courts have adopted these concepts. In fact, as early as 1909, the
8 Washington State Supreme Court held that the state may not criminalize misrepresentations
9 by employment officers, while permitting misrepresentations made by private business.⁴ The
10 Macho Court warned that “it is the act with which the law is concerned, rather than the
11 business in which one is engaged when it commits it.”⁵ Then, in 1969, a federal court
12 overturned a private detective’s wiretapping conviction upon a showing that federal agents
13 were not prosecuted for similar violations.⁶ In doing so, the Court approved of Professor
14 Moreland’s statement in Modern Criminal Procedure:

17 I do not feel that the Department of Justice can, in good conscience, prosecute
18 persons for a practice engaged in by the Department itself and regarded as legal by
19 the Department.⁷

20 These cases present this Court with the same conflict.

21 ² Talmud, Rabbinical writings, Shemot Rabbah, 25, 8 (A.D. 1st-6th cent.)

22 ³ JOHN CLARKE, Comp., Proverbs: English and Latin pp. 18, 33, 1639 (published in 1596-1658).

23 ⁴ Spokane v. Macho, 51 Wash. 322, 98 P. 755 (1909).

24 ⁵ Macho, 51 Wash. at 325.

25 ⁶ United States v. Robinson, 311 F.Supp. 1063, 1065-66 (W.D. Mo. 1969).

26 ⁷ Id. at 1065, citing Roy Moreland, Modern Criminal Procedure, 143 (Indianapolis Bobbs-Merrill) (1959).

1 The second reason these prosecutions are unconstitutionally selective, is because
2 Thurston County is not evenly applying this State's Perjury laws to everyone that makes
3 statements to the Court under oath. Instead, they are only applied to witnesses who testify
4 for the defense. This is an abuse of power that implicates the rights to due process, a fair
5 trial, to present a defense, to testify on one's own behalf, and to compel witnesses, *in*
6 *addition* to the right to equitably (non-selective) application of the laws.
7

8 Third, these prosecutions appear to be unconstitutionally selective in that the
9 application of the law to Mr. Duran and Ms. Belknap appears to be at least partially
10 motivated by the government's dislike of the defendants' actual or perceived political views
11 and associations. In other words, these prosecutions are two in a series of acts committed by
12 the Government as part of a campaign to chill the rights to speech, travel and association of
13 individuals expressing anti-government, anti-war, or anti-police viewpoints.
14

15 Any one of these reasons is sufficient, but for all of these reasons, dismissal of the
16 charges against Mr. Duran and Ms. Belknap is justified.

17 OFFER OF PROOF

18 1. The anti-police brutality protest on April 8, 2010. Ms. Belknap and Mr. Duran
19 were arrested by Olympia Police Department officers, on April 8, 2010, during a protest
20 against police-brutality. The protest was publicized as an act of solidarity by groups and
21 individuals concerned about force used by law enforcement officers on the West coast.
22

23 Some of the protestors have been accused of acts of vandalism, and one assaulted a
24 news reporter. But neither Ms. Belknap nor Mr. Duran is alleged to have committed these
25

1 crimes. In fact, as of the filing of this motion, Mr. Duran has never been charged for the
2 commission of any crime during that protest. He has no criminal history whatsoever.⁸

3 Despite the fact that Officer Gassett's role in the fatal shooting was the subject of a
4 pending civil suit and was part of the impetus for the protest, he was assigned to police that
5 protest. He then accused Ms. Belknap of kicking him and attempting to kick another officer.
6

7 2. Ms. Belknap's trial for Assault in the Third Degree (two counts). Ms. Belknap
8 was then charged Assaulting Olympia Police Officers Jason Winner and Charles Gassett.
9 (See State v. Belknap, 10-1-01479-2). That case proceeded to jury trial in August, 2010 with
10 the State was represented by Senior Deputy Prosecuting Attorney John M. "Jack" Jones.

11 On August 23, 2010, Ms. Belknap testified in her own defense. Mr. Duran testified
12 as a defense witness.⁹

13 On September 29, 2010, a little over one month after the conclusion of Ms. Belknap's
14 trial, Mr. Jones filed the perjury charges at issue in this case.¹⁰ Thurston County charged Ms.
15 Belknap and Mr. Duran with violating RCW 9A.72.020, alleging that they provided false
16 testimony as a witness in State v. Belknap, 10-1-01479-2. RCW 9A.72.020 provides:
17

- 18 (1) A person is guilty of perjury in the first degree if in any official proceeding he
19 makes a materially false statement which he knows to be false under an oath
20 required or authorized by law.
- 21 (2) Knowledge of the materiality of the statement is not an element of this crime, and
22 the actor's mistaken belief that his statement was not material is not a defense to a
23 prosecution under this section.

24 ⁸ A copy of the Prosecutor's Statement of Criminal History is attached as Appendix A.

25 ⁹ Copies of the transcripts are attached as Appendix B.

26 ¹⁰ Copies of the charging documents are attached as Appendix C.

1 (3) Perjury in the first degree is a class B felony.

2 On that same day, Mr. Jones filed Certifications for Determination of Probable Cause
3 in both case.¹¹ Mr. Jones signed both Certifications under penalty of Perjury.

4 3. The original Certifications contain numerous, material, false statements and
5 mischaracterizations. The original Certifications contain at least two material, false
6 statements about Mr. Duran, a third, material, false statement about Ms. Belknap, a fourth,
7 material misstatement about the nature of the evidence presented by Officer Bryan Houser,
8 and a fifth mischaracterization of the contents of a video.

9
10 a. Mr. Duran did not testify that he was looking at Ms. Belknap “the whole time.”

11 First, Mr. Jones certifies that Mr. Duran “testified he that he was looking directly at the
12 defendant Belknap **the whole time**”¹²

13
14 But Mr. Duran was not asked, and did not testify that he was “looking directly at Ms.
15 Belknap the whole time.” On direct examination, he did testify that he was “seated next to
16 her” “until nearly everybody was arrested, so about a half-hour to 45 minutes of – I was
17 about the third or fourth person to be taken in last.”¹³ He testified that he could not really see
18 the any of the other people arrested. Id. He testified that another person was “pushed down
19 on top of” Ms. Belknap.¹⁴ He testified that from what he saw “there was somebody laying on
20 top” of Ms. Belknap “the whole time.” Id. This testimony left room for the possibility that
21 something could have happened that he did not actually see.

22
23 ¹¹ Copies of the Certifications for Determination of Probable Cause are attached as Appendix D.

24 ¹² (Emphasis added.) Appendix D at 2.

25 ¹³ Appendix B at 6.

26 ¹⁴ Appendix B at 7.

1 Then on cross-examination, Mr. Jones asked Mr. Duran the following questions:

2 Q. All right. And you also testified that you were sitting on the ground, and you had
3 your hands –

4 A. On top of my head.

5 Q. – on top of your head?

6 A. Yes.

7 Q. Okay. And so you must have been looking right at Ms. Belknap, **then**?

8 A. Yes.

9 Q. And you said that there was someone that was on top of her almost **the whole**
10 **time**?

11 A. Yes.¹⁵

12 This cross-examination only establishes that Mr. Duran was looking right at Ms.
13 Belknap at some point when he had his hands on his head. Mr. Jones did not establish how
14 long Mr. Duran's hands were on his head, or that he was even looking at Ms. Belknap the
15 entire time his hands were on his head. Mr. Jones had every opportunity to ask more precise
16 questions to *attempt* to lock Mr. Duran into the testimony that is described in his
17 Certifications. But he did not. Mr. Duran's testimony was not nearly as absolute as that
18 described by Mr. Jones in his certification. In this regard, his description of this part of Mr.
19 Duran's testimony is false.

20 This false statement uttered by Mr. Jones' under penalty of Perjury is also material.
21 Mr. Jones's prosecution of Mr. Duran is predicated on the idea that Officer Gassett said
22 something happened and Mr. Duran said he did not see it. Mr. Duran's actual testimony left
23 room for the possibility that something could have happened that he did not actually see. Mr.
24 Jones' description of that testimony did not. By falsifying this material part of his

25 _____
26 ¹⁵ (Emphasis added.) Appendix B at 10.

1 Certifications, Mr. Jones has violated the same law he seeks to enforce against the
2 defendants.

3 b. Mr. Duran did not testify that the kick never occurred; he testified that if it
4 happened, he did not see it. Second, Mr. Jones certified that Mr. Duran perjured himself by
5 testifying that “Belknap had not kicked Officer Gassett”:

6 Defendant Duran testified that he was looking directly at the defendant Belknap the
7 whole time and that **defendant Belknap did not kick anyone . . .** The statements by
8 both defendants that defendant Belknap **had not kicked Officer Gassett**, were false
and perjurious, . . .¹⁶

9 But during his testimony, Mr. Duran did not say that the kick did not happen.

10 Instead, he only testified that, if it did, he did not see it. On direct, he testified:

11 Q. At any time **did you see** Margaret kick anyone?

12 A. No. From the position I was sitting, she – **from what I saw**, she was not able to
13 kick anybody because there was somebody laying on top of her.

14 Q. **Did you see** her attempt to kick anyone?

15 A. No.¹⁷

16 In fact, during his cross-examination, Mr. Jones specifically elicited this limited testimony:

17 Q. Did she also have a kerchief around her neck?

18 A. At one point, yes.

19 Q. You indicated that you were just a few feet from her, and you **didn’t ever see** her
20 kick anybody; is that correct?

21 A. Yes.¹⁸

22
23
24 ¹⁶ (Emphasis added.) Appendix D at 2.

25 ¹⁷ (Emphasis added.) Appendix B at 5-8.

26 ¹⁸ (Emphasis added.) Appendix B at 10-12.

1 This distinction is also material. As explained in the subsequently filed Knapstad
2 motion, the State does not (and could not) have proof that Mr. Duran actually saw any kick.
3 Accordingly, if Mr. Duran only testified about what he did not see (as opposed to what did
4 and did not actually occur) then the State does not even have probable cause to support its
5 claim of Perjury, much less proof beyond a reasonable doubt that it actually happened.

6
7 c. The prosecution also materially mischaracterized Ms. Belknap's testimony.

8 Again, the prosecution spoke of absolutes: "The statements by both defendants that
9 defendant Belknap had not kicked Officer Gasset, were false and perjurious."¹⁹ But during
10 direct examination (Mr. Jones did not even ask Ms. Belknap questions about this on cross-
11 examination) Ms. Belknap provided testimony that was materially different. Indeed she did
12 deny intentionally kicking Officer Gasset, but she also admitted that she could have had
13 inadvertent contact with him or another officer.²⁰ This distinction is material because the
14 State does not have direct, positive proof that Ms. Belknap was not honest about her intent.
15 Instead, it only has circumstantial evidence from which it could argue that any kick was
16 intentional. Therefore, in order to have probable cause to support the Perjury charges, the
17 prosecutor mischaracterized her testimony.

18
19 d. The prosecutor exaggerated the reliability of the evidence provided by Officer
20 Bryan Houser. As is explained in each of the defendants' other motions, the State's burden
21

22
23
24
25 ¹⁹ Appendix D at 4.

26 ²⁰ Appendix B at 17-23.

1 of production, in a Perjury case, is especially high.²¹ To establish probable cause that Perjury

2 was committed, the State must have

3 direct testimony of at least one credible witness, and that testimony to be sufficient
4 must be positive and directly contradictory of the defendant's oath.²²

5 There must also be

6 either another such witness or corroborating circumstances established by
7 independent evidence, and of such character as clearly to turn the scale and overcome
8 the oath of the defendant and the legal presumption of his innocence.²³

9 Accordingly, it is material that Mr. Jones mis-described the nature of the evidence that it had
10 from Officer Bryan Houser.

11 Mr. Jones indicates in his Certifications that "the testimony of Officer Bryan Houser"
12 is part of its evidence to support the charges against the defendants. But Officer Houser
13 never testified. Neither did he sign a statement under penalty of perjury. He was never
14 deposed or even disclosed as a potential witness at her first trial. Instead, Jones led this
15 Court to believe that the testimony already occurred when it did not.

16 The sole evidence from Officer Houser, consists of a "follow-up statement" that was
17 not disclosed to the defense prior to Ms. Belknap's Assault trial. His assertions are of
18 dubious value in many respects, none of which have been exposed or considered by
19 subjecting them to the rigors of cross-examination and consideration by a jury. By
20 describing Officer Houser's evidence as "testimony", Mr. Jones cloaks it in a aura of
21

22
23
24 ²¹ Nessman v. Sumpter, 27 Wn. App. 18, 22-23 (Wash. Ct. App. 1980).

25 ²² Sumpter, 27 Wn. App. at 22-23.

26 ²³ Sumpter, 27 Wn. App. at 22-23.

1 credibility that it has not earned. Mr. Jones's description of the evidence is clearly false,
2 material because of its effect on credibility.

3 e. Mr. Jones falsely described the contents of the video. The video of the alleged
4 assault was not shown at Belknap's assault trial. Counsel for Belknap inquired of Jones,
5 pursuant to the discovery rules, what time frame on the video recording the alleged assault
6 was at. Jones responded that "the video speaks for itself."²⁴ Counsel for the undersigned
7 agree. It quite clearly does not depict what Officer Gassett or Mr. Jones claims it does. The
8 Defense has had the video enhanced—slowed down and brightened—and looks forward to
9 the opportunity to showing it to this Court at the hearing on this motion.

10
11 4. Even after he was given warning about his perjurious statements and an
12 opportunity to change them (a courtesy he did not offer either defendant) the prosecutor only
13 fixed one of the false statements. It appears that the State filed charges prior to obtaining an
14 actual transcript of Mr. Duran's or Mr. Belknap's testimony,²⁵ as that was prepared a week
15 after charges were filed (on October 4, 2010).²⁶ But the transcript of this testimony was
16 prepared at the State's request and copies were provided to the defense as part of the State's
17 discovery packet. After receiving the transcripts, the prosecution did not amend the
18 Certifications of Probable Cause.

19
20 On December 28, 2010, Mr. Duran and Ms. Belknap served their Knapstad motions
21 on the State. In doing so, the defendants put Mr. Jones on notice of their belief that his
22

23
24 ²⁴ See Jones Email, January 4, 2011, attached herein as Appendix E.

25 ²⁵ The State was not compelled by the Statute of Limitations or other deadlines to file perjury charges prior to
obtaining a transcript.

26 ²⁶ A copy of the Certificate of Report is attached as Appendix F.

1 Certifications contained untrue facts.²⁷ Thereafter, Mr. Jones acknowledged receipt of the
2 motions.

3 A month later, Mr. Jones had still done nothing to correct his false statements.
4 Accordingly, at the Omnibus hearing held on January 31, 2011, the defense specifically
5 warned Mr. Jones that this Motion would be filed. The matter was also discussed in open
6 court, and a briefing and briefing schedule were set. Several hours later, Mr. Jones filed
7 Amended Probable Cause Certifications in both of the defendants' cases.²⁸ In the Amended
8 documents, Mr. Jones fixed only one of the five problems. He did change the Certification to
9 clarify that Mr. Duran testified he "did not see defendant Belknap kick anyone". The other
10 problems remain.
11

12 5. What has been done in other cases. Those who would face criminal liability if this
13 ordinance were enforced in a fair and non-arbitrary manner fall into three categories:
14

- 15 1. A defense witness (this would include a defendant) that, orally or in writing,
16 makes a material false statement that he knows to be false under an oath required
or authorized by law.
- 17 2. A government or plaintiff's witness (this would include law enforcement officers)
18 that, orally or in writing makes a material false statement that he knows to be false
under an oath required or authorized by law.
- 19 3. An attorney (civil or criminal, defense or prosecution/plaintiff) that makes a
20 material false statement that is known to be false under an oath required or
21 authorized by law.
22
23

24 ²⁷ See Mr. Duran's and Ms. Belknap's *Memorandum and Declaration for Pre-Trial Dismissal*
25 *Pursuant to State v. Knapstad*, 107 Wn.2d 346 (1986).

26 ²⁸ A copy of the First Amended Certifications of Probable Cause are attached as Appendix G.

1 Perjury in the First Degree is a charge filed rarely in both Thurston County and in
2 Washington generally.²⁹ In response to a discovery request, the Thurston County
3 Prosecuting Attorney indicated that six other perjury charges have been filed in the last
4 decade.³⁰ Two of those cases were filed by (now-former) Deputy Prosecuting Attorney
5 David H. Bruneau, and related to incidents in which a defendant or defense witness had made
6 false statements:
7

- 8 1. State v. Kaymesha L. Hanson, 03-1-00267-8; and
- 9 2. State v. Marvin Pope 03-1-00268-6.

10 The other four cases were filed by the Senior Deputy Prosecuting Attorney involved in this
11 case, John M. "Jack" Jones, and concerned allegations that the defendant or a defense
12 witness made false statements:

- 13 1. State v. Christopher Knoblock, 05-1-02456-2;
- 14 2. State v. Caleb Tucker, 05-1-02457-1;
- 15 3. State v. Jerimiah Bell, 09-1-01329-6; and
- 16 4. State v. Michael Crawford, 09-1-00568-4.

17 This data makes for easy math. 100% of the Perjury cases filed by the Thurston County
18 Prosecutor's Office in the last decade concern testimony given by defendants or defense
19 witnesses. 0% have concern false statements made by lawyers or State's witnesses.
20

21 ²⁹ According to the Washington State Sentencing Guidelines Commission, which tracks all
22 convictions in Washington State, there have only been 22 convictions for Perjury in the First Degree
23 in the last 10 years. In addition, the Honorable Marsha Pechman, United States District Judge for the
24 Western District of Washington, recently sentenced John K. Arnold to 45 days in prison for
25 committing perjury before a grand jury. She stated that it was the first time she sentenced anyone to
26 prison for perjury in 23 years on the bench. Posting of Rich Anderson to the Daily Weekly,
[http://blogs.seattleweekly.com/dailyweekly/2010/10/john_k_arnold_ex-intelius_exec.php] (Oct. 11,
2010, 8:52 PST).

³⁰ A copy of the discovery request, and the State's response is attached as Appendix H.

1 It strains credulity to suggest that, in the last decade, no State's witness has provided
2 testimony that was false. This becomes even more unlikely if that testimony is viewed with
3 the highly-critical eye applied by the prosecutor to Mr. Duran and Ms. Belknap's testimony
4 here. Surely defendants are acquitted in Thurston County Superior Court after State's
5 witnesses testify (after being sworn to tell the truth) that they have committed acts that
6 constitute crimes. The obvious conclusion that these wholly lopsided statistics compel is that
7 all sorts of witnesses make false statements, but some do so without fear of retribution by the
8 Thurston County Prosecuting Attorney's Office.
9

10 This conclusion is also supported by review of cases such as State v. Gregg Warren,
11 09-1-03122-9, Mr. Warren was charged, along with two others of assaulting Jason A.
12 Minear.³¹ The case was a "he said/he said" in which the jury acquitted. No one associated
13 with the case was charged with Perjury. An even starker example comes from State v.
14 Eisfeldt, 03-1-01636-9.³² In that case, the trial court entered *written findings* indicating that
15 Detective Ben Elkins provided false testimony in support of an application for a search
16 warrant, and then again in a hearing held pursuant to CrR 3.6. This State's witness twice
17 gave false testimony with impunity.³³ Notably, the prosecutor handling the case in which
18 Elkins twice provided false testimony, was David Bruneau – one of the two prosecutors that
19 has filed Perjury charges against defendants.
20
21
22

23 ³¹ Copies of the Docket, Certification of Probable Cause, and Verdict Form are attached as Appendix I.

24 ³² Copies of the Docket, Certification of Probable Cause, and Findings of Fact and Conclusions of Law
25 Pertaining to CrR 3.6 are attached as Appendix J.

26 ³³ See Appendix J, Findings of Fact at 6, fn. 9.

1 7. Other evidence of motive. As the above sections suggest, the Perjury prosecutions
2 of Mr. Duran and Ms. Belknap are part of a larger, systemic problem – defendants and their
3 witnesses will have their testimony subject to detailed inspection by the government, while
4 government witness (and even the very prosecutors engaged in that review process) are not
5 required to conform their statements to the truth. This disparate enforcement of the laws
6 prohibiting Perjury implicates a number of the important constitutional rights afforded to all
7 criminal defendants. These include the rights to due process,³⁴ to compulsory process,³⁵ to a
8 fair trial and to present a defense.³⁶ This disparate enforcement of the laws also harms the
9 integrity of the truth-finding function of the criminal courts. In Washington v. Texas, the
10 United States Supreme Court explained:

11 The right to offer the testimony of witnesses, and to compel their attendance, if
12 necessary, is in plain terms the right to present a defense, the right to present the
13 defendant's version of the facts as well as the prosecution's to the jury so it may
14 decide where the truth lies. . . This right is a fundamental element of due process of
15 law.³⁷

16 ³⁴ A defendant's due process guarantees are protected by the Fourteenth Amendment to the United States
17 Constitution and Art. I, sec. 3 of the Washington State Constitution. Due process requires fair notice of
18 proscribed criminal conduct and standards to prevent arbitrary enforcement. State v. Harner, 153 Wn.2d 228,
237, 103 P.3d 738 (2004); citing State v. Becker, 132 Wn.2d 54, 61, 935 P.2d 1321 (1997).

19 ³⁵ The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have
20 compulsory process for obtaining witnesses in his favor." Art. I, sec. 22, of the Washington Constitution
21 provides that "[i]n all criminal prosecutions the accused shall have the right . . . to have compulsory process to
22 compel the attendance of witnesses in his own behalf." The guaranty of compulsory process is a "fundamental
23 right and one 'which the courts should safeguard with meticulous care.'" State v. Maupin, 128 Wn.2d 918, 924,
24 913 P.2d 808 (1996) (quoting State v. Burri, 87 Wn.2d 175, 181, 550 P.2d 507 (1976)).

25 ³⁶ The Sixth Amendment to the Washington Constitution provides that an accused has the right to obtain
26 witnesses and present a defense. U.S. Const. amend. 6, Wash. Const. art. I, sec., 22; Douglas v. Alabama, 380
U.S. 415, 419, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965); State v. Hudlow, 99 Wn.2d 1, 14-15, 659 P.2d 514
(1983). Under both the federal and state constitutions, a criminal defendant has the right to present his version
of the facts to the jury so that it may decide "where the truth lies." Maupin, 128 Wn.2d at 924 (quoting
Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)).

³⁷ 388 U.S. 19, cited with approval in State v. Smith, 101 Wn.2d 36, 41, 677 P.2d 100 (1984); State v. Thomas,
150 Wn.2d 821, 857, 83 P.3d 970 (2004).

1 The defense also contends that the government was motivated, at least in part, to ask
2 few questions on cross-examination and then subject Ms. Belknap's and Mr. Duran's
3 testimony to intense scrutiny not applied to other cases for another, more personal, reason.
4 The government targeted them for this scrutiny and prosecution because of their associations
5 and political views. This motivation becomes clearer if viewed in the light of relationship
6 between law enforcement or criminal justice agencies and the Western Washington activist
7 community.
8

9 Thurston and other Western-Washington counties see a fair amount of protest activity
10 by individuals who are against the war and are concerned about the abuse of power and force
11 by law enforcement. In response, various government agencies have joined forces in a
12 (sometimes lawful and sometimes unlawful) effort to stifle what they believe is not just
13 illegal behavior, but also just disruptive speech.
14

15 As a part of this joint effort, the United States Army and the Pierce County paid a
16 "confidential informant" to proactively spy on people that they believed might participate in
17 illegal behavior or just disruptive speech.³⁸ The Olympia Police Department make up some
18

19
20 ³⁸ Attached as Appendix K are the following:

- 21 • A copy of the Informant Consent form;
- 22 • A partially redacted e-mail in which the informant is providing information about another, anti-police rally – the e-mail also shows that the informant works with the U.S. Army. The un-redacted copy contains the names of innocent parties and can be provided once arrangements for a protective order have been made;
- 23 • Declaration of Grays Harbor County Undersheriff verifying that the Army is providing local law-enforcement intelligence of this confidential source;
- 24 • Declaration of Donald Ramsdell, Chief of Police at the Tacoma Police Department, indicating that he receives and relies on the briefings from the Army.
- 25 • Declaration of Thomas R. Rudd, in which he explains that he is a Force Protection Specialist, Police Intelligence Officer, and Installation Antiterrorism Officer for the Department of the Army Civilian and Chief of the Force Protection Division, Directorate of Emergency Services, Fort Lewis,
26 Washington. His division "executes force protection, antiterrorism and police intelligence operations

1 of the members of a governmental "fusion cell" that received information gathered by the
2 informant.³⁹ This informant has since been "outed" and information about his role widely
3 disseminated.⁴⁰ A number of Olympia Police Department officials and officers are being
4 sued in federal court for their role in spying on individuals believed to be involved in protest
5 activity in Thurston County and the surrounding areas.⁴¹ Other members of the "fusion cell"
6 recently agreed to pay nearly a half-million dollars in order to settle a lawsuit filed by Phil
7 Chinn, another target of this informant's surveillance.⁴² In this litigation, Plaintiff Philip
8 Chinn sought redress for Defendants' violation of his First and Fourth Amendment rights
9 when they pulled him over, arrested him and prosecuted him under the false pretext of
10

12 and training and develops, coordinates, monitors, and evaluates the status of the installation force
13 protection, antiterrorism, and crime prevention programs. Using information networks, we conduct
14 daily force protection information collection and analysis and generate and disseminate a variety of
15 briefings, assessments and reports. Among those are threat assessments and force protection daily
16 summaries." Finally, he confirms that he interfaces with other law enforcement agencies.

17 ³⁹ Attached as Appendix L are the following:

- 18 • Declaration of Aberdeen Police Chief Robert H. Torgerson verifying that they have received
19 information from the U.S. Army, disseminated through the Fort Lewis FP Fusion Cell, and it included
20 information about protest groups participating in "disruptive" behavior at the Ports of Olympia and
21 Tacoma;
- 22 • E-mail showing that Thurston County and the Olympia Police Department were among the recipients
23 of information from Thomas R. Rudd, the U.S. Army Officer tasked with distributing "threat
24 assessments" and information from the informant;
- 25 • E-mail showing that Officer Rudd sent the Olympia Police Department warning about the specific anti-
26 police brutality protest at which Ms. Belknap was arrested.

⁴⁰ A copy of the Seattle Weekly's article about the informant is attached as Appendix M.

⁴¹ The case is 3:10-cv-5018 RBL, Panagacos, et al., v. Towery et al. In their Third Amended Complaint for
Violations of Civil Rights, the Plaintiffs allege that they were victims
of a deliberate inter-governmental policy to spy on 1st Amendment protected activity and to make pre-
emptive arrests to quash dissent and prevent possible peaceful civil disobedience before it had
occurred. This was a part of a tactic of deliberate false arrests and imprisonments, excessive force,
malicious prosecution, and other forms of brutality and humiliation to disrupt a series of
demonstrations based on the content of the protest, to try to forcibly coerce the participants in those
demonstrations from abandoning the exercise of their First Amendment rights.

⁴² The Seattle Weekly article included in Appendix M documents the settlement on page 3.

1 allegedly driving under the influence, as part of a plan devised to deter and prevent Mr.
2 Chinn and others from engaging in lawful anti-war demonstrations. As part of the evidence
3 offered in support the cause of action, Mr. Chinn demonstrated that local law-enforcement
4 had a photograph of his car, had been tasked with following him, and were instructed to pull
5 him over.

6
7 These events relate to this case because Ms. Belknap was *also* surveilled by the same
8 informant. His notes describe her as “W/F 21 5’4” Maggie (oly)” who has short, curly hair,
9 is “highly emotional”, and is a “street medic”.⁴³ His notes indicate a “[n]eed” to “isolate Phil
10 [Chinn] and Maggie might break Phil. Will turn for self-preservation.” *Id.* Finally, the notes
11 suggest that Maggie associates with people connected to an organization called “Copwatch.”
12 *Id.*

13
14 These notes, identifying her and singling her out, become all the more important in
15 light of the video of the alleged kicks of Officers Gassett and Winner. The State alleges that
16 Ms. Belknap attempted to kick Officer Winner, at which point she was approached by
17 Officer Gassett. The video the State has provided in discovery does not show Ms. Belknap
18 attempting to kick Officer Winner (and in fact she was acquitted of that allegation.) But it
19 does show Officer Gassett approaching Ms. Belknap, as she lay in a tangled heap on the
20 ground, with his baton extended.⁴⁴

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23
24 ⁴³ A redacted copy of these notes are attached as Appendix N. The un-redacted copy contains the names of
innocent parties and can be provided once arrangements for a protective order have been made.

25 ⁴⁴ This video was provided to the defense by the State as part of its discovery, and the defense is prepared to
26 introduce it as evidence at any hearing in this matter.

1 These notes also illuminate why, Officer Houser, in his “follow up” statement related
2 to this incident, explains that the Ms. Belknap is “known” to officers.

3 These notes, suggesting she would “turn for self-preservation” also become important
4 in light of the Government’s repeated efforts to get Ms. Belknap and Mr. Duran to cooperate
5 with the Government and “confess their conspiracy.”⁴⁵ In fact, the initial plea offers
6 demonstrate that the Government was not even prepared to let Mr. Duran or Ms. Belknap
7 plead as charged unless they cooperated with the Government.
8

9 There is more. Briefings that also describe the protestors as “anarchists”.⁴⁶ In part of
10 his cross-examination of Ms. Belknap and Mr. Duran, Mr. Jones focuses on the fact that they,
11 and other protestors, were wearing “black clothing.”⁴⁷ The defense also received a copy of e-
12 mail chains showing that the Olympia Police Department singled out a comment (posted in
13 response to an Olympian article) that called for inter-governmental effort to stop a person
14 associated with “copwatch” and other “anarchist terrorist thugs” from freely organizing.⁴⁸
15 Finally, attached is the copy of another e-mail chain, this time between Officer Bryan Houser
16 and another officer.⁴⁹ Officer Houser talks about the mass arrest (which included the arrest
17
18

19 ⁴⁵ Copies of some of the Government’s overtures are attached as Appendix O. Others are available and the
20 defense intends to offer them at any hearing on the matter.

21 ⁴⁶ A copy of one such briefing is attached as Appendix P.

22 ⁴⁷ See Appendix B at 11-12 and 17-18. Perhaps Mr. Jones had another reason for focusing on the clothing
23 worn by Mr. Duran, Ms. Belknap, and the other protestors. But Mr. Jones did not provide the full trial
24 transcript as discovery in the case. He only provided the portions that concern the testimony of Ms. Belknap
25 and Mr. Duran. The defense has obtained funds to have a complete set of transcripts prepared and can further
26 explore any explanations Mr. Jones gave for focusing on these facts, after they are completed.

⁴⁸ A copy is attached as Appendix Q.

⁴⁹ Appendix R.

1 which others enjoy, and []which are steps towards reducing them to the condition of a subject
2 race.”⁵¹

3 In advancing this purpose, the Supreme Court has long recognized that the
4 discriminatory enforcement of a facially neutral law offends equal protection no less than a
5 law that discriminates on its face.⁵² Simply put, “[u]nder the [United States’] equal
6 protection clause, a classification must treat similarly situated people equally.”⁵³ As a result,
7 selective prosecution claims are to be judged under equal protection standards.⁵⁴
8

9 Whether disparate application of a facially neutral ordinance violates the equal
10 protection clause is a factual question.⁵⁵ The challenging party must prove that
11 discriminatory purpose, at least in part, animated the classification.⁵⁶

12 2. THE DEFENDANTS’ CLAIM SATISFIES THE THREE PART *PRIMA FACIE*
13 TEST FOR SELECTIVE PROSECUTION.

14
15
16 ⁵¹ Strauder v. West Virginia, 101 U.S. 301, 308, 25 L.Ed.954 (1880).

17 ⁵² See, e.g., Yick Wo v. Hopkins, 118 U.S. 356, 373-74, 6 S.Ct. 1014, 30 L.Ed.220 (1886) (ordinance
18 prescribing the kind of building where laundries may be located unconstitutionally applied). In U.S. v.
19 Robinson, the Court further explained,

20 [a]lthough an act or statute may be valid on its face, intentional discriminatory enforcement thereof can
21 render its discriminatory enforcement constitutionally invalid. ... “Though the law itself be fair on its
22 face, and impartial in appearance, yet, if it is applied and administered by public authority with an ...
23 unequal hand, so as practically to make unjust and illegal discriminations between persons in similar
24 circumstances, material to their rights, the denial of equal justice is still within the prohibition of the
25 constitution.”

26 311 F.Supp. 1063 at 1065, quoting , Yick Wo, at 374.

⁵³ Grant County Fire Protection District No. 5 v. City of Moses Lake, 145 Wn.2d 702, 718 (2002) (“Grant
County I”), overruled on other grounds in 42 P.3d 394.

⁵⁴ Wayte v. United States, 470 U.S. 598, 608, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985).

⁵⁵ People v. Hirst, 31 Ca.App.3d 75, 85, 106 Cal. Rptr. 815 (1973).

⁵⁶ Personnel Administrator of Mass. V. Feeney, 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979).

1 a. Similarly situated persons are not similarly prosecuted. The first element in a
2 selective enforcement claim is that other persons who are similarly situated to the defendant
3 are not similarly prosecuted. Courts have considered the concept of “similarly situated” in
4 both selective enforcement/prosecution cases, as well as Title VII cases. “[S]imilarly
5 situated” does not mean identically situated.⁵⁷ Instead, the Court should look only to those
6 factors which are relevant, the number of which depends on the context of each case.⁵⁸ Even
7 as to those factors, a claimant “need not show complete identity . . . [just] substantial
8 similarity.” *Id.* For instance, populations are similarly situated if they have committed
9 similar offenses and are eligible for similar sentences,⁵⁹ or if they have engaged in reasonably
10 similar conduct.⁶⁰

12 To ascertain the relevant characteristics for a particular prosecution, it helps to review
13 what was important to the government when it criminalized the behavior – what it decided
14 was worth criminalizing. In this case, the plain language of the Perjury statute demonstrates

16 _____
17 ⁵⁷ United States v. Tuitt, 68 F.Supp.2d 4, 5-9 (Mass. 1999).

18 ⁵⁸ Radue v. Kimberly Clark Corporation, 219 F.3d 612 (7th Cir. 2000); see also Cronquist v. City of
19 Minneapolis, 237 F.3d 920 (8th Cir. 2001) (compare employees whose violations were of “comparable
20 seriousness”); English v. Colo. Dept. of Corrections, 248 F.3d 1002 (10th Cir. 2001) (compare violations of
comparable seriousness); Peele v. Country Mutual Ins. Co., 288 F.3d 319 (7th Cir. 2002) (those similarly
situated should be “directly comparable . . . in all material respects.”)

21 ⁵⁹ See United States v. Conne, 257 F.3d 1173, 1181 (10th Cir. 2001) (individuals charged with
22 methamphetamine distribution may be similarly situated to those charged with crack cocaine distribution
provided that both are eligible for same mandatory federal sentence.)

23 ⁶⁰ See, e.g., United States v. Armstrong, 517 U.S. 456, 470, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1986) (in
24 selective prosecution context, persons who could have been prosecuted for the same offense as black co-
defendants, but were not); United States v. Travis, 62 F.3d 170, 175 (6th Cir. 1995) (white passengers at airport
25 who are targeted for consensual interviews); Chavez v. Illinois State Police, 251 F.3d 612, 639 (7th Cir. 2001)
(white drivers who displayed indicators of drug trafficking and were stopped for traffic violations but were not
26 searched); United States v. Turner, 104 F.3d 1180, 1185 (9th Cir. 1997) (white crack dealers who were gang
members and sold large quantities of crack.)

1 that Washington State Legislature criminalized false statements made under oath, without
2 regard to the affiliations of that witness, and without regard to whether the false statement
3 was made by an attorney or a lay person.

4 In other ways, our federal and state governments placed special emphasis on false
5 statements made by lawyers and fair dealings by prosecutors in particular. Many of these are
6 summarized in by Kitsap County Chief Deputy Prosecuting Attorney Jeffrey Jahns'
7 Handbook on Prosecutorial Ethics and Professionalism titled "The Quest for Justice."⁶¹ He
8 explains that, prosecutors represent the public, and they demand the "highest standard of
9 professionalism of their servants."⁶² He counsels that:

11 Prosecutors inherently serve two masters—society and justice. Yet, society's desire
12 for a conviction in a particular case often directly conflicts with a prosecutor's duty to
13 seek justice in obtaining a verdict free of prejudice and passion, and based solely on
admissible evidence and reason.⁶³

14 He refers to the ABA Standard 3-1.2 and states that the

15 "prosecutor is an administrator of justice" who must exercise sound discretion in the
16 performance of prosecutorial duties. In this administrator of justice role, the ABA
17 Standard continues that the "duty of the prosecutor is to seek justice, not merely to
18 convict." Prosecutors in Washington have been granted tremendous power by the
19 public. Washington is not a grand jury state, and a prosecutor can subject anyone to
criminal charges and possible arrest and jail based solely on his or her signature. This
awesome power must be wielded impartially. . . .⁶⁴

20 Finally, he includes a copy of the Washington Oath of Attorney ("I am fully subject to the
21 laws of the State of Washington and the laws of the United States and will abide by the
22

23 ⁶¹ A copy of the first chapter is attached as Appendix S.

24 ⁶² Appendix S at 5.

25 ⁶³ Appendix S at 9 (citing GRESHMAN, PROSECUTORIAL MISCONDUCT, at viii-x (1996)).

26 ⁶⁴ Appendix S at 10 (quoting ABA Standard 3-1.2)

1 same”),⁶⁵ and the Washington State Bar Association’s Creed of Professionalism (“I will be
2 forthright and honest in my dealings with the court, opposing counsel, and others.”)⁶⁶

3 Recognizing these same concepts, the United States Supreme Court held:

4 The United States Attorney is the representative not of an ordinary party to a
5 controversy, but of a sovereignty whose obligation to govern impartially is as
6 compelling as its obligation to govern at all; and whose interest, therefore, in a
7 criminal prosecution is not that it shall win a case, but that justice shall be done. As
8 such, he is in a peculiar and very definite sense the servant of the law, the twofold
9 aim of which is that guilt shall not escape or innocence suffer. He may prosecute
10 with earnestness and vigor – indeed, he should do so. But, while he may strike hard
blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from
improper methods calculated to produce a wrongful conviction as it is to use every
legitimate means to bring about a just one.⁶⁷

11 According to the Perjury statute, there is no difference between false statements made
12 by prosecution or defense witnesses. Yet in Thurston County, the law is applied only to
13 defendants or other witnesses who testify for the defense. According to the other authority
14 cited, lawyers have particular responsibility for following the law and being meticulous about
15 truthfulness in their dealings. And prosecutors in Washington are particularly tasked with
16 ensuring that their filing of charges is based on accurate and sufficient evidence, as well as
17 with seeking justice and instead of a conviction. The law simply does not leave room for the
18 selective prosecution of (an adherence to) the law prohibiting perjury that is evidenced here.
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23 ⁶⁵ Appendix S at 19.

24 ⁶⁶ Appendix S at 20.

25 ⁶⁷ Berger v. United States, 295 U.S. 78, 55 S.Ct. 629, 633, 79 L.Ed.2d 1314 (1935) (conviction reversed for
26 prosecutorial misconduct.)

1 b. There is discriminatory purpose behind the selective prosecution. The second
2 element of a discriminatory enforcement claim is that the discrimination be intentional or
3 purposeful on the part of law enforcement officials.

4 i. Statistical proof is sufficient to demonstrate discriminatory purpose. Under certain
5 circumstances, a showing of disparate impact alone is sufficient to make out a claim of
6 unconstitutional discrimination. In particular, where the evidence of disparate impact
7 demonstrates “a pattern as stark as that in *Gomillion* or *Yick Wo*” it is sufficient.⁶⁸ The
8 existence of discriminatory purpose is to be “inferred from the totality of the circumstances,
9 including the fact that if it is true, the law bears more heavily on one group than another.”⁶⁹

11 Neither the Offer of Proof nor this Motion will present lengthy statistical analysis to
12 show disparate enforcement; it is not needed. That is because Thurston County exclusively
13 enforces this statute against defendants or their witnesses. There is hardly a starker statistic,
14 and as such, it is sufficient to demonstrate unconstitutional enforcement. “Sometimes a clear
15 pattern” which cannot be explained on any basis other than discrimination “emerges from the
16 effect of the state action even when the governing legislation appears neutral on its face.”⁷⁰

18 ii. There is also other proof of discriminatory purpose. Discriminatory purpose can
19 [also] be shown by demonstrating that the “decisionmaker ... selected or reaffirmed a
20 particular course of action at least in part ‘because of’ not merely ‘in spite of’ its adverse
21

22 ⁶⁸ *Arlington Heights v. Metropolitan Development Corp.*, 429 U.S. 252, 267, 97 S.Ct. 555, 50 L.Ed.2d 450
23 (1977); see *Castaneda v. Partida*, 430 U.S. 482, 495-96 & n.17, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977) (once
24 defendant has shown substantial disparity in group representation, defendant is deemed to have made out a
prima facie case and shifted burden of proof to the State); *New Jersey v. Soto*, 324 N.J. Supr. 66, 70 & 83-85,
734 A.2d 350, 352 & 360-61 (finding intentional discrimination based “primarily on statistics.”)

25 ⁶⁹ *Washington v. Davis*, 426 U.S. 229, 242, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976).

26 ⁷⁰ *Arlington Heights*, 429 U.S. at 267.

1 affects on an identifiable group.”⁷¹ Mr. Duran and Ms. Belknap do not need to show this,
2 because they have already demonstrated the starkest of disparate effects. But it is notable
3 that there is also other evidence of discriminatory purpose – there is concerning evidence that
4 they were targeted because of their beliefs, speech, and association.
5

6 c. The Prosecution Complained of Here is Arbitrarily Selective, in Violation of the
7 Defendants’ Constitutional Rights. The final element in a selective prosecution claim is
8 proof that the discrimination was made on the basis of an arbitrary or invidious classification.
9 A claim of selective enforcement can be (but does not need to be) based upon a classification
10 directed at someone because of their race, religion or nationality. Neither is it dependent
11 upon classification which implicates a constitutional right, such as free speech. Selectivity
12 can also be based on these or on “other arbitrary classification.”⁷²

13 “The term ‘arbitrary classification’ implies that certain [] group distinctions [other
14 than race, nationality, or religion] could be a basis for liability” under the equal protection
15 clause.⁷³ Discriminatory enforcement against a class is illegal, whether the “class consists of
16 black or white, Jew or Catholic, Irishman or Japanese, United Farm Worker or Teamster.”⁷⁴
17 The same can also be true if the class consists of perceived “anarchists.” “The absence of a
18 proper justification for not fully enforcing the statute makes any partial enforcement
19 discriminatory.”⁷⁵
20

21 ⁷¹ Farm Labor Org. Comm. V. Ohio State Highway Patrol, 308 F.3d 523, 533-34 (6th Cir. 2002) (quoting Wayte
22 v. United States, 470 U.S. at 610 (1985)).

23 ⁷² Oyler v. Boles, 386 U.S. 448, 456, 87 S.Ct. 1100, 18 L.Ed.2d 959 (1962).

24 ⁷³ Fuernick v. Sumpter Township, 78 F.3d 1051, 1057 (6th Cir. 1996).

25 ⁷⁴ Muriga v. Municipal Court for Bakersfield Judicial District 15 Cal.3d 286, 290, 540 P.2d 44 (1975).

26 ⁷⁵ Robinson, 311 F.Supp. at 1065-66.

1 Case law contains many notable examples of impermissible arbitrary classifications
2 that were not based on race, nationality or religion. There is United States v. Robinson, the
3 Court overturned a private citizen's conviction based upon proof that the government was
4 violating the same law.⁷⁶ In People v. Kail, the State was unconstitutionally enforcing a law
5 requiring bells on bicycles only against alleged prostitutes.⁷⁷ In City of Cleveland v.
6 Trzebuckowski, the court found discriminatory enforcement of an ordinance against privately
7 owned, for-profit billiard rooms and not against the city-owned, public recreation centers.⁷⁸
8 In People the State of New York v. Abram, the Court dismissed DUI prosecutions against
9 low-ranking members of the military due to failure to enforce the law against high-ranking
10 members of the military.⁷⁹

11 The defendants' claim is not based on race, religion, or nationality. But it is based on
12 the exercise of constitutional rights. It is based on Ms. Belknap's exercise of her
13 constitutional rights to due process, to compulsory process, to a fair trial, and to present a
14 defense. It is also based on other arbitrary classification (the defendants' perceived
15 association with people who hold anti-governmental views) similar to that invalidated in
16 Kail, Trzebuckowski, and Abram. Finally, like the defendant in Johnson, Mr. Duran and Ms.
17 Belknap are being prosecuted for allegedly engaging in activity that has also been undertaken
18 by the Government. These things, both individually and collectively, support their claim of
19 selective prosecution.

20 3. THE DEFENDANTS HAVE SET FORTH A *PRIMA FACIE* CASE OF
21 SELECTIVE PROSECUTION AND NOW THE BURDEN SHIFTS TO THE
22 GOVERNMENT.

23 ⁷⁶ Robinson, 311 F.Supp. at 1063 .

24 ⁷⁷ Interstate Material Corp. v. Chicago, 150 Ill.App.3d 944, 501 N.E.2d 919 (1986).

25 ⁷⁸ 85 Ohio St. 3d 524, 524, 709 N.E.2d 1148 (1999).

26 ⁷⁹ 178 Misc.2d 120, 127-29, 680 N.Y.S.2d 414 (1998).

1
2 Upon a successful *prima facie* showing of the selective prosecution elements, the
3 burden shifts to the opposing party to demonstrate that “the same decision would have
4 resulted even had the impermissible purpose not been considered.”⁸⁰ The level of scrutiny
5 (strict, intermediate, or rational basis) that applies is based upon the nature of the violation.
6 Constitutional jurisprudence suggests that, prior to consideration of the effect that the
7 appropriate level of scrutiny would have when applied in this case, this Court should
8 determine whether the level of scrutiny is the same under the State and Federal Constitutions.

9
10 Certainly, a greater discussion about the scrutiny applied to the classification here,
11 and why this classification would fail that scrutiny, is most appropriate after the government
12 proffers its justification, if any, for the disparate enforcement. Accordingly, it will only be
13 cursorily reviewed in this initial brief.

14 4. THE WASHINGTON CONSTITUTION PROVIDES BROADER
15 PROTECTION THAN THE FEDERAL CONSTITUTIONAL AND DEMANDS
16 STRICTER SCRUTINY.

17 Article I, sec. 12 of the Washington Constitution prohibits “granting to any citizen,
18 class of citizens, . . . privileges or immunities which upon the same terms shall not equally
19 belong to all citizens . . .” The Washington Supreme Court has indicated that the protection
20 afforded by Art. I, sec. 12 is generally coterminous with the Equal Protection Clause.⁸¹ In
21 doing so, however, the Court left open the possibility that Art. I, sec. 12 could provide
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25 ⁸⁰ Arlington Heights, 429 U.S. at 271, n. 21; Castaneda, 430 U.S. at 496-97.

26 ⁸¹ American Network, Inc. v. The Util. and Trans. Comm., 113 Wn.2d 59, 77, 776 P.2d 950 (1989).

1 greater protection than the federal equal protection clause.⁸² Under the circumstances
2 presented in both Grant County decisions, the Court held that the State constitution did
3 provide greater protection. The same is true for this case.

4 At issue in the Grant County cases was a municipal annexation procedure that gave
5 privileges to property owners of highly valued land not afforded to similarly situated
6 parties.⁸³ The Court considered these facts and Art. I, sec. 12 in light of the six Gunwall,
7 factors necessary for determining whether state constitutional provisions afford greater
8 protection than the federal constitution.⁸⁴

9
10 There are six nonexclusive criteria which must be considered when determining
11 whether, on a given subject, the Washington constitution affords greater protection than the
12 minimum protections afforded by the federal constitution:

- 13 1. The textual language of the state constitution;
- 14 2. Significant differences in the texts of the parallel provisions of the federal and
15 state constitutions;
- 16 3. State constitutional and common law history;
- 17 4. Preexisting state law;
- 18 5. Differences in structure between the federal and state constitutions; and
- 19 6. Matters of particular state interest or local concern.⁸⁵

20 ⁸² Grant County I. The Supreme Court issued an initial decision in Grant County I on March 14, 2002. Then,
21 on reconsideration, the Court amended its decision. Grant County Fire Protection District No. 5 v. City of
22 Moses Lake, 150 Wn.2d 791, 83 P.3d 419 (2004) ("Grant County II"). Grant County I is relevant to this case,
23 primarily because of its analysis of the protections provided by Washington's privileges and immunities clause.
24 In Grant County II, the Court did not change this portion of the opinion. 150 Wn.2d at 805 ("As in Grant County
25 I, on reconsideration we hold that the privileges and immunities clause of the Washington State Constitution,
26 article I, section 12, requires an independent constitutional analysis from the equal protection clause of the
United States Constitution.")

⁸³ Grant County I, 145 Wn.2d at 702; Grant County II, 150 Wn.2d at 805.

⁸⁴ Grant County I, 145 Wn.2d at 702; Grant County II, 150 Wn.2d at 805.

⁸⁵ State v. Gunwall, 106 Wn.2d 54, 58, 720 P.2d 808 (1986).

1 The Grant County Courts determined that, because the language of Art. I, sec. 12 is
2 very different from that of the federal constitution, under certain circumstances factors one
3 and two weighed in favor of broader protection:

4 [W]hereas the federal constitution is concerned with majoritarian threats of invidious
5 discrimination, the state constitution protects against laws serving private interests to
6 the detriment of the majority. . . . Thus, one might expect that the state provision
7 would have a harder 'bite' where a small class is given a special benefit, with the
8 burden spread among the majority. On the other hand, the Equal Protection Clause
would bite harder where majority interests are advanced at the expense of minority
interests.⁸⁶

9 The framers of Art. 1, sec. 12 were primarily concerned with protecting against privileges or
10 immunities given to corporations or the powerful and influential. This case concerns a
11 situation in which the Government (the powerful – the minority) has exempted itself from the
12 same laws that it seeks to enforce against Mr. Duran and Ms. Belknap (private citizens – the
13 majority). The burden of this inequity is being shouldered by citizens like them. Factors one
14 and two weight in favor of broader protection here.

15
16 The Grant County Courts also looked to constitutional history (factor three) and
17 found it favored broader protection. Art. I, sec. 12 was adopted from Oregon's constitution,
18 with Washington adding a reference to corporations.⁸⁷ The Framers perceived corporations
19 "as manipulating the lawmaking process," and were concerned about "undue political
20 influence exercised by those with large concentrations of wealth, which they feared more
21 than they feared oppression by the majority."⁸⁸ Washington was concerned about favoritism

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24 ⁸⁶ Grant County I, 145 Wn.2d at 726-27; Grant County II, 150 Wn.2d at 806-07.

25 ⁸⁷ Grant County I, 145 Wn.2d at 727; Grant County II, 150 Wn.2d at 808.

26 ⁸⁸ Grant County I, 145 Wn.2d at 727-28; Grant County II, 150 Wn.2d at 808.

1 and special treatment towards the few, especially the powerful few, whereas the government
2 was concerned with preventing discrimination against former slaves.⁸⁹ This concern directly
3 correlates with the government's exempting itself from the laws (special treatment towards
4 the few) it seeks to enforce against Mr. Duran and Ms. Belknap. Because it presents an issue
5 of the government giving itself special treatment and its manipulation of the law enforcement
6 process, factor three calls for broader protection in this case.
7

8 The Grant County Courts found early Washington Supreme Court cases instructive,
9 as they repeatedly struck down laws which favored a particular class or person:

- 10 • Statutes exempting cereal and flouring mills from an act imposing onerous conditions
11 on other similarly situated person;⁹⁰
- 12 • An ordinance which prohibited anyone from selling produce within the city except for
13 farmers who grew it themselves;⁹¹
- 14 • An ordinance imposing criminal penalties on one party but allowing others in like
15 circumstances to act with impunity;⁹² and
- 16 • The requirement that dealers in comic books obtain prepublication licenses while
17 larger newspapers distributing the same comics do not.⁹³

18 Accordingly, the Court concluded that the fourth Gunwall factor weighed in favor of
19 independent interpretation.⁹⁴

20 Factor five, structural differences between the constitutional provisions, will always
21 weigh in favor of different interpretations, and does so here.⁹⁵

22 ⁸⁹ Grant County I, 145 Wn.2d at 728; Grant County II, 150 Wn.2d at 808.

23 ⁹⁰ State v. Robinson Co., 84 Wash. 246, 249-50, 146 P.2d 628 (1915).

24 ⁹¹ In re Application of Camp, 38 Wash. 393, 322 P.2d 844 (1905).

25 ⁹² Macho, 51 Wash. 322.

26 ⁹³ Adams v. Hinkle, 51 Wn.2d 763, 785-86, 322 P.2d 844 (1958).

⁹⁴ Grant County I, 145 Wn.2d at 702.

1 Finally, in Grant County, the sixth factor favor independent analysis because
2 annexations, at issue in that case, are a matter of state and local concern more appropriately
3 addressed by the State constitution.⁹⁶ This factor also favors independent interpretation,
4 because this case involves issues related to local law enforcement practices and procedures.
5 One of the primary concerns raised in this case pertains to a practice, by Thurston County
6 prosecutors, of personally signing Certifications of Probable Cause and attesting that facts
7 exist and are sufficient to support charges. This is a matter of local concern, as after the
8 United State Supreme Court's unanimous decision in Kalina v. Fletcher, other Washington
9 counties have stopped this practice.⁹⁷ They did so because the Kalina Court held that a King
10 County Prosecutor that made false statements in Certification for Determination of Probable
11 Cause was not entitled to prosecutorial immunity against damages awarded under 42 U.S.C.
12 Section 1983.⁹⁸ As this case demonstrates Thurston County Prosecutor's Office, continues
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16 ⁹⁵ Grant County I, 145 Wn.2d at 730; Grant County II, 150 Wn.2d at 811.

17 ⁹⁶ Grant County I, 145 Wn.2d at 731; Grant County II, 150 Wn.2d at 811.

18 ⁹⁷ 522 U.S. 118, 120, 118 S.Ct. 502, 129 L.Ed.2d 471 (1997).

19 ⁹⁸ Id. The Kalina Court further explained:

20 Although the law required [the Certification] be sworn or certified under penalty of perjury, neither
21 federal nor state law made it necessary for the prosecutor to make that certification. In doing so,
22 petitioner performed an act that any competent witness might have performed. Even if she may have
23 been following a practice that was routinely employed by her colleagues and predecessors in King
24 County, Washington, that practice is surely not prevalent in other parts of the country and is not even
25 mandated by King County. Neither petitioner no *amici* argue that prosecutors routinely follow the
26 King County practice. Indeed, tradition, as well as the ethics of our profession, generally instruct
counsel to avoid the risks associated with participating as both advocate and witness in the same
proceeding. . . . *Amicus Curiae* United States points out that federal prosecutors typically do not
personally attest to the facts in an affidavit filed in support of an application for an arrest warrant . . .
Thirty-Nine Counties of the State of Washington state that local court rules in only two counties in
Washington require the prosecutor to file an additional document beyond an information. . . .
Washington Rule of Professional Conduct 3.7 (1995) [states that] "A lawyer shall not act as advocate
at a trial in which the lawyer . . . is likely to be a necessary witness," unless four narrow exceptions
apply.

1 its practice and as a result we have the unique conflict presented by this case today – the
2 same prosecutor that is accusing Mr. Duran and Ms. Belknap of providing false information
3 under oath, provided false information under oath.

4 Although the Grant County decisions and application of the Gunwall factors to our
5 case makes it clear that Art. I, sec. 12 provides greater protection here than the federal
6 constitution, the Grant County courts spent less time explaining what form of scrutiny that
7 greater protection required. However, after Grant County I concluded that greater protection
8 is warranted, the Court next discussed the “reasonable ground” standard typically applied by
9 Washington Courts.⁹⁹ Justice Madsen also noted that early Washington cases
10

11 indicate that the constitutional standard is not the same as the present equal protect
12 “rational basis” test, where any conceivable legislative reason for a classification will
13 suffice. Instead, the cases indicate a classification must rest on some real difference
14 between those within and without the class that is relevant to the apparent or asserted
15 purpose of the legislation.¹⁰⁰

16 These cases suggest that a standard that is more stringent than “rational basis” is required.

17 Next, the Grant County I Court noted that the right to petition (at issue in that case) is
18 a fundamental right under the Washington Constitution, and, for this reason, some form of
19 “heightened” scrutiny applied. However, that would have been the case even if Art. I, sec.
20 12 did not provide broader protection than the federal constitution, because classifications
21 infringing on a fundamental right already receive strict scrutiny.¹⁰¹ Subsequent cases have
22

23 Kalina, 522 U.S. at 131.

24 ⁹⁹ Grant County I, 145 Wn.2d at 731-32.

25 ¹⁰⁰ Grant County I, 145 Wn.2d at 741 (J. Madsen, dissenting.)

26 ¹⁰¹ City of Seattle v. State, 103 Wn.2d 613, 670-71 694 P.2d 641 (1985).

1 also verified that “heightened scrutiny” is required, but also gave little direction about what
2 that meant.¹⁰²

3 Strict scrutiny applies to a selective prosecution claim brought under the Federal
4 Constitution if the classification challenged involves a suspect class or infringes on a
5 constitutional right.¹⁰³ Strict scrutiny requires proof by the government of a “compelling
6 interest” for the classification.¹⁰⁴

7
8 One conclusion that Grant County I suggests is that Art. I, sec. 12’s broader
9 protections are subject to strict scrutiny. This conclusion is compelled, in part, by the Court’s
10 conclusion that the framers of the Washington were primarily concerned about privileges
11 given to the few and the powerful, to the detriment of the majority. This concern, while
12 different from that held by the framers of the federal constitution (they were concerned about
13 discrimination against racial minorities), was of such equal importance to them that they
14 created a specific clause to address it. And it is clearly established in federal case law that a
15 law or classification which discriminates against a racial minority is subject to strict
16 scrutiny.¹⁰⁵ The concern which prompted the framers of the Washington State Constitution
17 to adopt the privileges and immunities clause should be entitled to no less consideration.
18 Any classification which runs afoul should be subject to strict scrutiny.
19
20

21
22 ¹⁰² The Lummi Nation v. Golder Associates, Inc., 236 F.Supp. 2d 1183, 1196 (W.D.Wash. 2002); State v. McCarthy, 112 Wn. App. 231, 238, 48 P.3d 1014 (2002).

23 ¹⁰³ Seattle, 103 Wn.2d at 670-71.

24 ¹⁰⁴ Williams v. Rhodes, 393 U.S. 23, 32, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968).

25 ¹⁰⁵ Seattle, 103 Wn.2d at 670-71 (citing Rhodes, 393 U.S. at 31); Reynolds v. Sims, 377 U.S. 533, 566, 84
26 S.Ct. 1362, 12 L.Ed.2d 506 (1964)).

1 Intermediate scrutiny is applied where “strict scrutiny is not mandated, but where
2 important rights or semi-suspect classifications are affected.”¹⁰⁶ To withstand intermediate
3 scrutiny, the challenged statute must further a substantial state interest.¹⁰⁷ This could be the
4 standard applied to this case because it is the next step above rational basis review.

5 But this Court does not necessarily need to determine whether the classification
6 complained of here would withstand strict or immediate scrutiny. That is because it fails to
7 survive the rational basis test.

8 Under rational basis review, a classification will be upheld only when it rests of a
9 legitimate state objective and the law is not wholly irrelevant to the achievement of that
10 objective.¹⁰⁸ Courts have also granted relief under rational basis review for arbitrary
11 classifications:
12

- 13 • In Trzbecukowski, the Ohio Supreme Court dismissed indictment against a private
14 billiard room operator after the State conceded the ordinance at issue was not also
15 enforced against city-owned billiard halls.¹⁰⁹ The Court concluded that the selective
16 prosecution failed rational basis scrutiny because the discrimination was irrational
17 and arbitrary:
18 the city’s paternalistic view of the differences between privately owned, for-
19 profit billiard rooms and city-owned not-for-profit recreation centers, is
20 clearly irrelevant to law enforcement purposes...¹¹⁰
- 21 • In People v. Acme Markets, Inc., the Court dismissed informations where the
22 prosecutor enforced Sunday closing laws only upon individual complaint.¹¹¹

23 ¹⁰⁶ State v. Shawn P., 122 Wn.2d 553, 560, 859 P.2d 1220 (1993).

24 ¹⁰⁷ State v. Coria, 120 Wn.2d 156, 170 (1992).

25 ¹⁰⁸ Id., quoting State v. Thome, 129 Wn.2d 736, 771, 921 P.2d 514 (1996); State v. Coria, 120 Wn.2d 156, 169-
26 70, 685 P.2d 584 (1992).

¹⁰⁹ 85 N.E.2d 1148, 1156 (Ohio, 1999).

¹¹⁰ Id., at 1156.

¹¹¹ 37 N.Y.2d 326, 334 N.E.2d 555 (N.Y. 1975).

- 1
- 2 • In People v. Kail, the Court suppressed all evidence against a defendant after finding
 - 3 the defendant strictly enforced all laws against suspected prostitutes and not others.
 - 4 The Court concluded the enforcement was irrational because the law (prohibiting
 - 5 riding a bicycle without a bell on it) had nothing to do with eradicating
 - 6 prostitution.¹¹²

7 This case is similar to Trzbackowski, Acme Markets, and Kail, because the government is

8 enforcing the law against individuals who are not powerful or well-liked within the

9 jurisdiction, along-side the government's own failure to follow the law and its failure to

10 similarly enforce the law against other powerful or well-liked individuals. Perjury destroys

11 the integrity of the judicial process, regardless of who utters the false statement under oath.

12 Indeed, it is likely that the integrity of the judicial process is harmed *more* when it is the

13 Government itself that fails to conform its statements to the truth. The primary distinction

14 between these groups is local power and influence. The disparate prosecution in this case is

15 unconstitutional.

16 Additionally, rational basis scrutiny does not tolerate rules passed (or conduct

17 executed) for the purpose of disadvantaging politically unpopular groups:

- 18 • State constitutional amendment prohibiting state and municipal governments from
- 19 enacting anti-discrimination laws that protect homosexuals unconstitutional.¹¹³
- 20 • Unconstitutional to deny a permit for operation of a group home for mentally retarded
- 21 individuals.¹¹⁴
- 22 • Unconstitutional to deny undocumented children an education.¹¹⁵

23 ¹¹² People v. Kail, 150 Ill.App. 34, 75, 501 N.E.2d 979 (1986).

24 ¹¹³ Romer v. Evans, 517 U.S. 620, 634, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996).

25 ¹¹⁴ City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 435, 105 S.Ct. 3249, L.Ed.2d 313 (1985).

26 ¹¹⁵ Plyler v. Doe, 457 U.S. 202, 223, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).

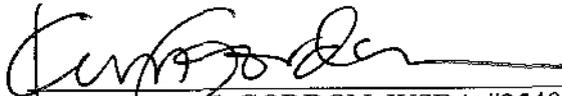
1 In this case, it is not the passage of a rule or law that is problematic. Rather, it is the
2 enforcement of that law against a group that is neither popular within Thurston County nor in
3 a position of power within the government, by government officials who are disregarding
4 that law themselves. It is also the enforcement of this law against defendants and their
5 witnesses while the law is not enforced against government witnesses. This enforcement
6 does not withstand rational basis review.
7

8 CONCLUSION

9 For the foregoing reasons, the defendants jointly move for dismissal of their
10 prosecutions for Perjury.

11 RESPECTFULLY SUBMITTED this 7th day of January, 2011.

12 GORDON & SAUNDERS

13 

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15 Counsel for Matthew Duran

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19 Counsel for Margaret Belknap
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APPENDIX Q

1
2
3
4 SUPERIOR COURT OF THE STATE OF WASHINGTON
5 FOR THURSTON COUNTY

6 STATE OF WASHINGTON,

7 Plaintiff,

8 v.

9 MARGARET BELKNAP, and
10 MATTHEW DURAN,

11 Defendants.

Nos. 10-1-01479-2
10-1-01466-1

MOTION TO DISMISS FOR
LACK OF PROBABLE CAUSE

12 **I. RELIEF REQUESTED**

13 Defendant Margaret Belknap, by and through her attorney Jennifer Kaplan,
14 and Defendant Matthew Duran, by and through his attorney Kimberly Gordon move
15 for entry of an order as follows: Defendants move to dismiss the charges against
16 them for lack of probable cause.

17 In the Defendants' *Knapstad* motions, they argue that their testimony in the
18 Assault III trial does not establish a prima facie case of guilt. This motion asks this
19 Court to find that Certifications of Probable Cause in this case are based on
20 statements made knowingly falsely or in reckless disregard of the truth and material
21 omissions and that when the falsehoods contained therein are set aside, there is
22 insufficient probable cause for this prosecution to proceed. The Defendants are able

23 MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE-- 1

1 to bring this Motion because, despite their release on personal recognizance, they
2 are “restrained” and are therefore entitled to challenge the sufficiency of the
3 evidence justifying that restraint.

4 **II. FACTS OF THE CASE**

5 On April 8, 2010, Belknap and Duran attended an anti-police brutality
6 protest in Olympia. Because of reports that some of the protesters had committed
7 acts of vandalism and that one allegedly assaulted a news reporter covering the
8 protest, the Olympia Police Department ended the protest and conducted a mass
9 arrest of all participants. That State alleged that during the mass arrest, a
10 confrontation took place between Belknap and Officer Charles Gassett. A video
11 provided in discovery depicts Gassett approaching Belknap, who was lying on the
12 ground, with his baton extended, and brandishing it as though he was going to strike
13 her, not once but twice. Both times, he was blocked.

14 Gassett claimed that he approached Belknap because she was kicking her
15 legs in the direction of another officer, Jason Winner, and that she kicked Gassett in
16 the leg and in the groin. Belknap was arrested and charged with two counts of
17 Assault in the Third Degree, one for the alleged attempted kicking of Winner and
18 one for kicking Gassett. Belknap pled not guilty and proceeded to trial. She and
19 Duran both testified in her defense.

20 Deputy Prosecuting Attorney John M. “Jack” Jones was the prosecuting
21 attorney in the Assault trial. He wrote the instant Certifications of Probable Cause

1 against Belknap and Duran, attached herein as Exhibits A and B, respectively, on
2 September 29, 2010 and the Amended Certifications of Probable Cause against
3 Belknap and Duran (“the Certifications”), attached herein as Exhibits C and D,
4 respectively, on January 31, 2011, and signed them all under penalty of perjury.¹ In
5 them, he laid out the state’s version of the factual history of this case, summaries of
6 the Defendants’ testimonies, and the evidence he relied upon in support of the
7 state’s position that the Defendants committed Perjury in the First Degree at the
8 Assault trial.

9 **III. NATURE OF ILLEGAL RESTRAINT.**

10 **A. THE DEFENDANTS ARE RESTRAINED.**

11 Although the Defendants are not currently in physical custody, they under
12 restraint of constitutional proportions. There is no requirement that the challenged
13 restraint consist in actual physical confinement. It is sufficient that the defendants
14 are currently “subject to restraints ‘not shared by the public generally.’” See
15 Maleng v. Cook, 490 U.S. 488, 492 (1989) (*per curiam*) (noting that the Supreme
16 Court has “very liberally construed the ‘in custody’” requirement and it is satisfied
17 whenever “petitioner suffers [some] present restraint”); accord, Dickerson v. Guste,
18 932 F.2d 1142, 1144 (5th Cir.) (detainer lodged against prisoner serving sentence
19 under prior conviction satisfies custody requirement), cert. denied, 112 S. Ct. 214
20 (1991).

21 _____
22 ¹ Jones amended the Certifications of Probable Cause after the Defense made him aware of the

1 The most recent United States Supreme Court case on point is Albright v.
2 Oliver, 510 U.S. 266, 114 Sct. 807, 127 L.Ed.2d 114 (1991). In that case, Justice
3 Ginsburg, writing for the six-judge concurrence, affirmed that a prosecution itself
4 can unduly restrain liberty. Justice Ginsburg wrote:

5 A person facing serious criminal charges is hardly freed from
6 the state's control upon his release from a police officer's physical
7 grip. He is required to appear in court at the state's command. . . .
8 Pending prosecution, his employment prospects may be diminished
9 severely, he may suffer reputational harm, and he will experience the
10 financial and emotional strain of preparing a defense.

11 A defendant incarcerated until trial no doubt suffers greater
12 burdens. That difference, however, should not lead to the conclusion
13 that a defendant released pre-trial is not still "seized" in the
14 constitutionally relevant sense. Such a defendant is scarcely at
15 liberty, he remains apprehended, arrested in his movements, indeed
16 "seized" for trial, so long as he is bound to appear in court and
17 answer the state's charges. He is equally bound to appear, and is
18 hence "seized" for trial, when the state employs the less strong-arm
19 means of a summons in lieu of arrest to secure his presence in court.

20 510 U.S. at 278-79.

21 Moreover, Justices Kennedy and Thomas concurred, assuming without
22 deciding that:

23 a malicious prosecution . . . can cause unjustified torment and
anguish -- both by tarnishing one's name and by costing the accused
money in legal fees and the like . . . [and] that some of the interests
granted historical protection by the common law of torts (such as the
interests in freedom from defamation and malicious prosecution) are
protected by the Due Process Clause.

Id.

material misstatements of the Defendants' testimony, but the amendments have not cured the documents' defects.

MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE-- 4

1 Even Justices Stevens and Blackmun, in their dissent, asserted that in all
2 cases:

3 an official accusation of serious crime has a direct impact on a range
4 of identified liberty interests. That impact, moreover, is of sufficient
5 magnitude to qualify as a deprivation of liberty meriting
6 constitutional protection.

7 510 U.S. at 296, citing, *Young v. U.S. ex rel Vuitton et Fils S.A.*, 481 U.S. 787,

8 814, 95 L.Ed.2d 740, 107 S.Ct. 2124 (1987); *U.S. v. Marion*, 404 U.S. 307, 320, 30

9 L.Ed.2d 468, 92 S.Ct. 455 (1971). In sum, a majority of Justices in *Albright*

10 believed that having to return to court to defend against a groundless prosecution

11 alone was a “significant restraint of liberty.”

12 Under these general principles, a petitioner released on recognizance

13 pending trial is in custody and may challenge probable cause to support the charges

14 against him. See, e.g., *Hensley v. Municipal Ct.*, 411 U.S. 345, 351-52 (1973)

15 (release on recognizance subject to conditions pending appeal was sufficient); see

16 also, e.g., *Lefkowitz v. Newsome*, 420 U.S. 283, 286 (1975) (persons held on bail

17 pending trial are ‘in custody’ for purposes of collateral challenge of those judicial

18 determinations that bind them.) The Defendants properly challenge the sufficiency

19 of probable cause supporting their restraint.

20 **B. NO COURT HAS THE AUTHORITY TO RESTRAIN AN**

21 **INDIVIDUAL ON CRIMINAL CHARGES UNLESS THERE IS**

22 **PROBABLE CAUSE TO SUPPORT THE CHARGING DECISION.**

23 Under the Fourth Amendment, the government can only detain and

incarcerate an individual if there is a valid **judicial**, rather than law enforcement or

1 prosecutorial, determination that there is probable cause to believe that the particular
2 individual held has committed a crime. Gerstein v. Pugh, 420 U.S. at 114, 43 L. Ed.
3 2d at 65. This determination of probable cause must take place within 48 hours of a
4 person's arrest -- if there is a delay "the burden shifts to the government to
5 demonstrate the existence of a bona fide emergency or other extraordinary
6 circumstance." County of Riverside v. McLaughlin, 500 U.S. 44, 57, 114 L. Ed. 2d
7 49, 63, 111 S. Ct. 1661 (1991).

8 In Washington, these procedures are set out in the court rules. CrR 3.2.1(a)
9 & (b) state:

- 10 (a) **Probable Cause Determination.** A person who is arrested
11 shall have a judicial determination of probable cause no later
12 than 48 hours following the person's arrest, unless probable
13 cause has been determined prior to such arrest.
- 14 (b) **How Determined.** The court shall determine probable cause
15 on evidence presented by a peace officer or prosecuting
16 authority in the same manner as provided for a warrant of
17 arrest in rule 2.2(a). The evidence shall be preserved and
18 may consist of an electronically recorded telephonic
19 statement. If the court finds that release without bail should
20 be denied or that conditions should attach to the release on
21 personal recognizance, other than the promise to appear for
22 trial, the court shall proceed to determine whether probable
23 cause exists to believe that the accused committed the offense
charged, unless this determination has previously been made
by a court. Before making the determination, the court may
consider an affidavit, a document as provided in RCW
9A.72.085, or any law amendatory thereto, or sworn
testimony, and further may examine under oath the affiant
and any witnesses the affiant may produce. Sworn testimony
shall be electronically or stenographically recorded. The
evidence shall be preserved and shall be subject to

1 constitutional limitations for probable cause determinations,
and may be hearsay in whole or in part.

2 While the probable cause determination need not be a formal adversarial
3 procedure, if an informal ex parte proceeding is held, the courts have been careful to
4 require such determinations of probable cause to be made based only on sworn
5 testimony and on the record which is preserved. State v. K.K.H., 75 Wn. App. 529,
6 534-35, ___ P.2d ___ (1994).²

7 The reason to preserve the sworn testimony is that an incarcerated individual
8 has always had the right to obtain review of the initial probable cause determination
9 by a higher court on a writ of habeas corpus. See Gerstein v. Pugh, 420 U.S. at 115,
10 43 L. Ed. 2d at 66, citing 2 W. Hawkins, Pleas of the Crown 112-115 (4th ed. 1762);
11 1 J. Stephen, History of the Criminal Law of England 243 (1883); Ex parte
12 Bollman, 4 Cranch 75, 97-101, 2 L. Ed 554 (1807).

13 Finally, any determination of probable cause is fundamentally an
14 *individualized* inquiry, focusing on whether or not there is cause to believe that a
15 *particular* person has committed a *particular* crime. The Supreme Court has
16 phrased the issue in stark terms:

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18 ² In K.K.H., the Court of Appeals approved of JuCR 7.3(b) which is identical to CrRLJ
19 3.2.1(b). The Court of Appeals explained:

20 In K.H.'s case, the telephone conference took place within 48 hours of
21 his arrest. The prosecutor was sworn prior to testifying and his testimony was
preserved. . . .
75 Wn. App. at 535 n.3.

1 a person's mere propinquity to others independently suspected of
2 criminal activity does not, without more, give rise to probable cause.
3 . . . Where the standard is probable cause, a search or seizure of a
4 person must be supported by probable cause **particularized with**
5 **respect to that person.** This requirement cannot be undercut or
6 avoided by simply pointing to the fact that coincidentally there exists
7 probable cause to search or seize another or to search the premises
8 where the person may happen to be.
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1 (Emphasis added.) Ibarra v. Illinois, 444 U.S. 85, 91, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979)
2 (citations omitted and emphasis added); see also State v. Broadnax, 98 Wn.2d 289, 295-96, 654
3 P.2d 96 (1982) (“[r]egardless of the setting . . . constitutional protections are possessed
4 *individually*.” (italics in original)). Indeed, without individualized suspicion, there can not even
5 be probable cause under the less stringent reasonable belief standard applicable to school
6 children. See Kuehn v. Renton School Dist., 103 Wn.2d 594, 595, 694 P.2d 1078 (1985).
7 (“Because the search at issue here was conducted without individualized suspicion the student’s
8 rights under the Fourth Amendment were violated.”).

9 The question before this Court, therefore, is whether the evidence provided to this court
10 raises individual particularized suspicion that each of the defendants committed a crime.

11 **III. WHAT IS PROBABLE CAUSE TO SUPPORT THE CRIME OF PERJURY?**

12 Perjury is unlike any other crime³ in that, the prosecution may not even bring such
13 charges before a trier-of-fact unless a special burden of production is met. *State v. Wallis*, 50
14 Wn.2d 350 (Wash. 1957). This is because Perjury charges implicate a number of the important
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23 ³ Except for the crime of Treason.

1 constitutional rights. These include the rights to due process,⁴ to compulsory process,⁵ to a fair
2 trial and to present a defense.⁶ As the Washington Court of Appeals explained,

3 Because perjury has a peculiar impact on the administration of our system of justice, the
4 law has raised proof of this offense to a position unique in the rules of criminal evidence.
5 Perjury requires a higher measure proof than any other crime known to the law, treason
6 alone excepted. Our courts have therefore held that the testimony of one witness or
7 circumstantial evidence alone is not sufficient when the charge is perjury. To convict:

8 There must be the direct testimony of at least one credible witness, and that testimony to
9 be sufficient must be positive and directly contradictory of the defendant's oath; in
10 addition to such testimony, there must be either another such witness or corroborating
11 circumstances established by independent evidence, and of such a character as clearly to
12 turn the scale and overcome the oath of the defendant and the legal presumption of his
13 innocence. Otherwise the defendant must be acquitted.

14 *Nessman v. Sumpter*, 27 Wn. App. 18, 22-23 (Wash. Ct. App. 1980) (internal citations omitted).

15 Notably,

16 Direct, as distinguished from circumstantial, evidence of the falsity of the
17 defendant's testimony by at least one witness is generally required. This does not
18 mean that there must be a denial in the very words of the defendant's testimony
19 but that there must be testimony by at least one witness furnishing direct evidence
20 of facts **contrary to, or absolutely incompatible or physically inconsistent**
21 **with**, that sworn to by the accused.

22 ⁴ A defendant's due process guarantees are protected by the Fourteenth Amendment to the United States
23 Constitution and Art. I, sec. 3 of the Washington State Constitution. Due process requires fair notice of proscribed
criminal conduct and standards to prevent arbitrary enforcement. *State v. Harner*, 153 Wn.2d 228, 237, 103 P.3d
738 (2004); citing *State v. Becker*, 132 Wn.2d 54, 61, 935 P.2d 1321 (1997).

⁵ The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have
compulsory process for obtaining witnesses in his favor." Art. I, sec. 22, of the Washington Constitution provides
that "[i]n all criminal prosecutions the accused shall have the right . . . to have compulsory process to compel the
attendance of witnesses in his own behalf." The guaranty of compulsory process is a "fundamental right and one
'which the courts should safeguard with meticulous care.'" *State v. Maupin*, 128 Wn.2d 918, 924, 913 P.2d 808
(1996) (quoting *State v. Burri*, 87 Wn.2d 175, 181, 550 P.2d 507 (1976)).

⁶ The Sixth Amendment to the Washington Constitution provides that an accused has the right to obtain witnesses
and present a defense. U.S. Const. amend. 6, Wash. Const. art. I, sec., 22; *Douglas v. Alabama*, 380 U.S. 415, 419,
85 S.Ct. 1074, 13 L.Ed.2d 934 (1965); *State v. Hudlow*, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983). Under both the
federal and state constitutions, a criminal defendant has the right to present his version of the facts to the jury so that
it may decide "where the truth lies." *Maupin*, 128 Wn.2d at 924 (quoting *Washington v. Texas*, 388 U.S. 14, 19, 87
S.Ct. 1920, 18 L.Ed.2d 1019 (1967)).

1 (Emphasis added.) *State v. Hanson*, 14 Wn. App. 625, 628 (Wash. Ct. App. 1975).

2 Probable cause exists when “facts or circumstances, based on reasonably trustworthy
3 information, sufficient to cause a reasonable officer to believe a crime has been committed.”
4 *State v. Trammell*, 2009 Wash. App. LEXIS 49 (Wash. Ct. App. Jan. 13, 2009). Accordingly, to
5 establish probable cause in any Perjury case, the State has the burden of producing evidence
6 sufficient to persuade a reasonable officer that the defendant gave testimony under oath, that
7 some material portion of that testimony was false, that other testimony is positively and directly
8 contradictory to that of the defendant, and that there is also either another witness or
9 “circumstance” that is of “such a character as to turn the scale and overcome the oath of the
10 defendant and the legal presumption of his innocence.” *Nessman*, 27 Wn. App. at 22-23.

11 **IV. WHY THE STATE HAS NOT MET BURDEN OF ESTABLISHING PROBABLE**
12 **CAUSE TO SUPPORT THE PERJURY CHARGES.**

13 In his Certifications of Probable Cause, Mr. Jones states that the following evidence
14 demonstrates that defendants gave false testimony:

- 15 1. Officer Gasset’s testimony that defendant Belknap kicked him;
16 2. The Jury’s verdict;
17 3. The “testimony” of Officer Bryan Houser; and
18 4. “A video recording that shows the person who was on the ground, engaged with
19 Officer Gasset, kick Officer Gasset in the leg and groin area.”

20 The Certifications of Probable Cause filed against the Defendants contain three problems:
21 misstatements regarding witnesses’ testimony, material omissions, and misstatements of law.
22 After these problems are remedied, it becomes clear that the State has not put forth anything
23 approaching the quantum of evidence required to establish probable cause against either
Defendant. Accordingly, the charges against them must be dismissed.

1 **A. MIS- AND FALSE STATEMENTS ABOUT THE DEFENDANT’S**
2 **TESTIMONY AND THE STATE’S PROOF OF PERJURY.**

3 The first step in analyzing whether there is probable cause to believe that the State can
4 prove, by sufficient evidence, that the defendants gave false testimony, is to ascertain what
5 statements were made under oath. In these cases, the Certification of Probable case misstates the
6 testimony that is alleged to be false. It appears that Mr. Jones wrote the Probable Cause
7 Certifications for these cases without first obtaining transcripts of the testimony that he alleged to
8 be false.⁷ The *See* Certificate of Reporter Aurora Shackell, dated October 4, 2010, attached
9 herein as Exhibit E. In any event, most these misstatements remain, even after the State obtained
10 the transcripts, was alerted to the problem, and wrote Amended the Probable Cause
11 Certifications.

12 **1. The State misstated Ms. Belknap’s Testimony.** Mr. Jones stated in both versions⁸ of
13 the Belknap Probable Cause Certification: “Defendant Belknap testified that she did not kick
14 Officer Gassett and that another person was laying on top of her.” While this may be what Mr.
15 Jones wanted the testimony to show, Ms. Belknap’s actual testimony was materially different:

16 A. It was when we had just turned onto State Street. Suddenly, there was – well,
17 there had been a squad car, and suddenly, there was more squad cars, and they were all
18 around us, and they told us that we were done. And they fired some of their less lethal
pepper balls and told us that we had to get out of the street. So those people who were in
the street went on the sidewalk area. It was more of a gravel lot. And then they made us
get down on the ground in a pile.

19 Q. Okay. So did they tell you – they told you to sit down?
20

21

⁷ Notably, the State was not compelled by a Statute of Limitations or other deadline found in law to file the instant
charges without first obtaining transcripts of the testimony.

22 ⁸ One of these was filed after the defense filed Ms. Belknap’s Knapstad motion, and told Mr. Jones about the
23 mischaracterization.

1 A. I don't remember being told to sit down? I remember being pushed down, but
2 there was a lot of noise.

3 Q. Okay. And when you sat down, were you seated adjacent to Mr. Duran?

4 A. I was actually lying down on top of a small tree or shrub of some kind. I
5 wasn't sitting.

6 Q. So you were lying on your back?

7 A. Yeah. The tree was, yeah, underneath me.

8 Q. Okay. And did there come a point when another person was pushed on top of
9 you?

10 A. Yeah. It was right at the beginning when they made us go down. We were all
11 in a pile. And then the pile kind of like flattened out a bit, but not completely.

12 Q. Do you recall seeing a fellow who was kind of next to you having interaction
13 with an officer over not sitting down?

14 A. No, I don't.

15 Q. Okay. Did you kick any police officers that night?

16 A. No.

17 Q. Did you hit any police officers?

18 A. No.

19 Q. Is it possible you inadvertently had physical contact with a police officer?

20 A. Yes, it is possible.

21 Q. But you never intended to strike anyone?

22 A. No.

23 Q. Was there a lot going on that evening, lots of people around?

A. Yes.

1 Q. When the police surrounded you with their patrol cars, were they just sitting
2 there parked, or did they have their lights going?

3 A. I seem to remember red and blue lights, so I would say, yes –

4 Q. Okay.

5 A. – they had their lights going.

6 Q. And were there people shouting?

7 A. Yes.

8 Q. People getting shot with pepper balls?

9 A. Yes.

10 *See* Testimony of Belknap, attached herein as Exhibit F, p.14-17.

11 In short, Belknap did not say that she did not kick Officer Gasset; she said that she did
12 not intentionally kick Officer Gasset, but could have done so by accident. In addition, she
13 testified to facts explaining *why* any physical contact could have been inadvertent (it was night,
14 she was pushed down amidst a pile of people, there was a lot of noise, she was lying on her back
15 on a small tree or shrub, there was another person pushed on top of her, there were a lot of
16 people around, she was surrounded by patrol cars with their red and blue lights flashing, people
17 were shouting, and people were getting shot with pepper balls.)

18 No one testified that they knew Ms. Belknap's state of mind at the time of the mass arrest
19 or the alleged incident. Officer Winner testified that he "saw Officer Gasset dealing with
20 Belknap. He was right next to me at that point, so I walked around to the other side of him to his
21 right side and tried to grab one of her other legs to stop her from kicking. I heard Officer Gasset
22 tell her something about being assaulted. I don't remember exactly what it was, but it cued me
23 that he had been – he had been hurt in some way. See Testimony of Jason Winner, attached

1 herein as Exhibit G, p. 21-22. He did not testify that he even saw Belknap kick Gasset, let alone
2 testify to believing that she had done so intentionally. Officer Gasset testified that he thought
3 Ms. Belknap was looking at him, but he did not (and could not have) said what Ms. Belknap saw
4 or intended or understood at the time he says he was kicked.

5 **2. Duran's Testimony.**

6 In his initial Probable Cause Certification, Mr. Jones certified that Mr. Duran testified
7 that "the kick did not happen." After Mr. Duran filed his Knapstad motion and informed Mr.
8 Jones, in person, that the transcripts do not support this representation, Mr. Jones filed and
9 Amended Certification. He did correct this portion of the representations that he made under
10 penalty of perjury. But another problem remains.

11 Mr. Jones stated in Mr. Duran's Amended Probable Cause Certification,

12 Defendant Duran testified that he was **looking directly at the defendant Belknap the**
13 **whole time** and that he did not see defendant Belknap kick anyone and that someone was
laying directly on top of Belknap.

14 (Emphasis added.) But Duran's testimony on direct, reads in relevant part:

15 Q. At any time did you see Margaret kick anyone?

16 A. No. From the position I was sitting, she – from what I saw, she was not able
17 to kick anybody because there was somebody laying on top of her.

18 Q. Did you see her attempt to kick anyone?

19 A. No.

20 *See* Testimony of Duran, attached herein as Exhibit H, p. 5-8. On cross-examination, Duran
21 testified:

22 Q. Did she also have a kerchief around her neck?

23 A. At one point, yes.

1
2 Q. You indicated that you were just a few feet from her, and you didn't ever see her kick anybody; is that correct?

3 A. Yes.

4 Q. All right. And you also testified that you were sitting on the ground, and you had your hands –

5 A. On top of my head.

6 Q. – on top of your head?

7 A. Yes.

8 Q. Okay. And so you must have been looking right at Ms. Belknap, then?

9 A. Yes.

10 Q. And you said that there was someone that was on top of her almost the whole
11 time?

12 A. Yes.

13 *Id.* at 10-12.

14 In short, Duran did not testify, as Jones said, that he was “looking at Belknap the whole
15 time.” He did testify that someone was on top of Ms. Belknap “the whole time,” and he was
16 asked questions about when he was looking at Ms. Belknap. But he was not specifically asked,
17 and he did not specifically assert that he looked at Ms. Belknap “the whole time.” Accordingly,
18 his testimony left open the possibility that he did not see everything that occurred with respect to
19 Belknap during the mass arrest.⁹ This is a critical distinction. In State v. Wallis, 50 Wn.2d 350,
20 353 (Wash. 1957), the Washington Supreme Court invalidated a perjury conviction on exactly

21 _____
22 ⁹ The defense concedes that the State might have been able to ask that the jury *infer* from the circumstances testified
23 to by Mr. Duran, that he should have seen the alleged kick. While there is *circumstantial* evidence that allows the State to argue that, this is very different from *direct, positive* proof that he was in fact looking at her the entire time and did in fact see what is alleged to be the kick.

1 that basis. A man was accused of selling alcohol to minors. The appellant testified that he had
2 not seen or heard anything evidence of the seller's guilt. The Court agreed that no one could
3 "testify categorically that the appellant had seen something or that he had heard something," and
4 that the appellant's perjury conviction was therefore unlawful. As Wallis decision indicates, the
5 State has not (and could not) produce direct, positive evidence to show that Mr. Duran's actual
6 testimony was false.

7 **3. The State falsely described the nature of the evidence from Officer Houser.** In
8 both versions of the Probable Cause Certifications, Mr. Jones tells this Court, under penalty of
9 perjury, that "the testimony of Officer Bryan Houser" is part of its evidence to support the
10 charges against the defendants. But Officer Houser never testified. Neither did he sign a
11 statement under penalty of perjury. He was never deposed or even disclosed as a potential
12 witness at her first trial. Instead, Jones led this Court to believe that the testimony already
13 occurred when it did not.

14 Even if Jones were referring to Houser's "follow-up report", attached herein as Exhibit I,
15 it is not evidence "of such a character as clearly to turn the scale and overcome the oath of the
16 defendants and the legal presumption of their innocence." *See Nessman*, 27 Wn. App. at 22-23.
17 Indeed, Houser's police report is suspicious in many regards. It is typed on blank paper rather
18 than on Olympia Police Department stationery. It is not signed by a supervisor. And although it
19 is dated April 9, 2010, the stamp on it indicates it was received by the Thurston County
20 Prosecuting Attorney in August, 2010, on the eve of Ms. Belknap's Assault trial. Moreover,
21 Houser is not on the state's witness list for the Assault trial, which is attached herein as Exhibit J.
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1 Putting to one side the dubiousness of its authenticity, as well as the facts that it was not
2 signed under penalty of perjury and the Defense was not given the opportunity for cross-
3 examination, it does not directly contradict the defendants' testimonies. With respect to Duran, it
4 says nothing, and certainly does not say what Duran was looking at and what he saw. With
5 respect to Belknap, it says, in relevant part, "I saw Belknap lean back and kick Officer Gassett in
6 the groin area with her right leg. I saw officer (sic) Gassett reach up with his hand to block the
7 kick as she quickly pulled her right leg back and kicked him in the groin area with her left leg."
8 It says nothing about whether her contact with Gassett, assuming *arguendo* that it even
9 happened, was intentional.

10 4. **The State falsely characterized the contents of the video.** The video of the alleged
11 assault was not shown at Ms. Belknap's assault trial. Counsel for Belknap inquired of Jones,
12 pursuant to the discovery rules, what time frame on the video recording the alleged assault was
13 at. Jones responded that "the video speaks for itself." See Jones Email, January 4, 2011, attached
14 herein as Exhibit K. Counsel for the undersigned agree. It quite clearly does not depict what
15 Gassett or Jones claims it does. The Defense has had the video enhanced—slowed down and
16 brightened—and looks forward to the opportunity to showing it to this Court at the hearing on
17 this motion.

18 **B. MATERIAL OMISSION.**

19 In his Probable Cause Certifications, Mr. Jones informed the Court that Ms. Belknap was
20 charged, with and convicted of, Assault in the Third Degree. But Mr. Jones fails to inform the
21 Court that Ms. Belknap was also charged with, but acquitted of, an additional count of assault.
22 This important because the State's evidence on both counts was provided by the same two
23

1 witnesses: Officer Gasset and Officer Winner. This omission is material because the fact that
2 the jury did not convict on Winner count, could undermine Officer Gasset's¹⁰ credibility.
3 According to the Probable Cause Certifications, Officer Gasset's is the "positive and directly
4 contradictory testimony" and it must be credible in order for the State to have probable cause to
5 support the Perjury charges. The fact that the jury may not have believed half of Officer
6 Gasset's testimony is, therefore, material.

7 C. MISSTATEMENT OF LAW.

8 Although Mr. Jones he did not mention the jury's acquittal of Ms. Belknap for the
9 Winner Assault charge, he relies upon its decision to convict Ms. Belknap of assaulting Officer
10 Gasset as evidence supporting the instant perjury charges. This materially misrepresents the
11 character of a jury's verdict under the law. A jury's verdict is not "corroborating circumstances
12 established by independent evidence." Nessman, *supra*, at 23. As this Court is likely well aware,
13 juries convict and acquit for all sorts of reasons. The bare fact of conviction is not "direct"
14 evidence that the jury found that Ms. Belknap and/or Mr. Duran made false statements during
15 their trial testimony. Accordingly, Mr. Jones misstated the law by stating that the jury's verdict
16 was "evidence that directly contradicted" the Defendants' testimony.

18 VI. CONCLUSION

19 The evidence offered by the State does not establish the falsity of the testimony actually
20 provided. Moreover, there are problems with each of the pieces of evidence cited by the State in
21 as evidence to support the charges of Perjury. As a whole the State can neither prove the falsity

22 _____
23 ¹⁰ It could also undermine Officer Winner's credibility, but according to the Probable Cause Certifications, the State is not relying on Officer Winner's testimony to prove Perjury.

1 of the defendants' statements, nor the level of direct, contradictory evidence that is required in
2 order to establish the probable cause necessary for Perjury charges. As a result, the defendants
3 respectfully request that the Court find that insufficient evidence supports probable cause and
4 dismiss the charges against the defendants.

5
6 DATED: February 7, 2011.

7 Respectfully submitted,

8 /s/ Jennifer Kaplan

9 _____
Jennifer Kaplan, W.S.B.A. #40937
Counsel for Margaret Belknap

10
11 /s/ Kimberly Gordon

12 _____
KIMBERLY N. GORDON, W.S.B.A. #25401
Counsel for Matthew Duran

APPENDIX R

1 In support of this motion, counsel submits the following declaration, appendices, and
2 authorities.

3 RESPECTFULLY SUBMITTED this 23rd day of December, 2010.

4 GORDON & SAUNDERS

5 

6 KIMBERLY N. GORDON, WSBA #25401
7 Counsel for Matthew Duran

8 **DECLARATION**

9 I, Kimberly N. Gordon, declare as follows:

- 10 1. I am the attorney of record for Matthew Duran, the defendant in this case.
11 2. Matthew Duran is charged with one count of Perjury in the First Degree as follows:

12 The defendant, MATTHEW KYLE DURAN, in the State of Washington, On
13 [sic] or about August 23, 2010, did make a materially false statement knowing
14 such statement was false, under oath required by law, in an official
15 proceeding.

16 A copy of the Information is attached as Appendix I.

- 17 3. A person is guilty of perjury in the first degree if "in any official proceeding he makes
18 a materially false statement which he knows to be false under an oath required or
19 authorized by law."¹ Put another way, Perjury "is the deliberate testifying to
20 something as true which is not, in fact, true."²
21 4. Perjury charges have "a peculiar impact on the administration of our system of
22 justice,"³ and therefore, "requir[e] a higher measure of proof than any other crime

23 _____
24 ¹ RCW 9A.72.020.

25 ² In re Jett, 6 Wn.2d 724, 728 (1940).

26 ³ Nessman v. Sumpter, 27 Wn. App. 18, 22 (1980).

MOTION AND DECLARATION
FOR DISMISSAL- 2

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1 known to the law, treason alone excepted.”⁴ This requirement is “deeply rooted in
2 past centuries.”⁵ As Dean Wigmore explained: “This unique requirement reflects the
3 underlying policy in Anglo-American jurisprudence of encouraging witnesses to
4 testify freely without fear of reprisals.” 7 J. Wigmore, *Evidence* x 2032 at 324 and s
5 2041 at 361 (1978).

- 6 5. In 1905, the Washington Supreme Court articulated the statement of proof that
7 survives to this day:

8 There must be the **direct testimony** of at least one credible witness, and that
9 testimony to be sufficient, **must be positive, and directly contradictory** of
10 the defendant’s oath. In addition to such testimony, there must be either
11 another such witness, or corroborating circumstances established by the
12 independent evidence, and of such a character as clearly to turn the scale and
13 overcome the oath of the defendant and the legal presumption of innocence;
14 otherwise the defendant must be acquitted.⁶

(Emphasis added.) The Ninth Circuit further explained: “[C]ircumstantial evidence
of such falsity [alone], no matter how persuasive, [is] insufficient.”⁷

- 15 6. In this regard, it is helpful to revisit the difference between “circumstantial” and
16 “direct” evidence:

17 Circumstantial evidence is that which establishes the fact to be proved only
18 through inference based on human experience that a certain circumstance is
19 usually present when another circumstance or set of circumstances is present.
Direct evidence establishes the fact to be proved without the necessity for
such inference.⁸

20 ⁴ *State v. Wallis*, 50 Wn.2d 350, 350 (1957), quoting *People v. ODonnell*, 132 Cal.App.2d 840, 845, 283 P.2d
21 714, 717 (1955).

22 ⁵ *Wallis*, 50 Wn.2d at 353, quoting *Weiler v. United States*, 323 U.S. 606, 65 S.Ct. 548, 550, 89 L.Ed. 495
(1945).

23 ⁶ *State v. Rutledge*, 37 Wash. 523, 528 (1905); *State v. Olson*, 92 Wn.2d 134, 136 (1979), citing *State v.*
24 *Buchanan*, 79 Wn.2d 740 (1971); *State v. Wallis*, 50 Wn.2d 350 (1957).

25 ⁷ *Radomsky v. United States*, 180 F.2d 781, 782-83 (9th Cir., 1950).

26 ⁸ *Radomsky*, 180 F.2d at 783.

MOTION AND DECLARATION
FOR DISMISSAL- 3

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1
2 7. The Certification of Probable Cause for this case suggests that Mr. Duran perjured
3 himself by testifying that "Belknap had not kicked Officer Gasset":

4 In addition to Officer Gasset's testimony⁹ that defendant Belknap kicked
5 him, and the Jury's verdict, there are two additional pieces of evidence that
6 directly contradict defendant Belknap's and defendant Duran's testimony.
7 The first is the testimony of Officer Bryan Houser who was present at the
8 scene of the arrest and saw defendant Belknap kick Officer Gasset in the leg
9 and groin area. The second is a video recording that shows the person who
10 was on the ground, engaged with Officer Gasset, kick Officer Gasset in the
11 leg and groin area.

12 A superior court trial is an official proceeding. Both defendant
13 Belknap and defendant Duran were under oath. Both defendants testified
14 regarding the matter at issue, which was whether defendant Belknap had
15 kicked Officer Gasset. **The statements by both defendants that defendant**
16 **Belknap had not kicked Officer Gasset, were false and perjurious,** as
17 shown by the jury's verdict of conviction, Officer's Gasset's testimony,
18 Officer Houser's statement, and the video recording.

19 (Emphasis added.) Appendix H at 2.

20 8. The Certification of Probable Cause materially mischaracterizes Mr. Duran's
21 testimony. Mr. Duran did not testify that Ms. Belknap "had not kicked Officer
22 Gasset." Instead, as the transcript provided by the State shows, he only (and
23 repeatedly) testified that he "**did not see**" any alleged kick. The State has not
24 indicated that it believes that the transcript it obtained from the Court reporter and
25 then provided as a part of discovery in this case is incorrect. Accordingly, the
26 defense does not believe that the State can credibly dispute this testimony. Instead, it
is the Certification for Determination of Probable Cause that is incorrect.

9. The undisputed (for purposes of this motion only) facts are found in the State's
discovery, which consists of:

⁹ The State did not provide a copy of Officer Gasset's trial testimony as a part of discovery. Ms. Belknap recently obtained an order for transcription at public expense, and that transcript, as well as the transcript of Officer Winner's testimony, is attached as Appendix K.

MOTION AND DECLARATION
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- 1 a. Testimony of Matthew Duran. (Attached as Appendix A.)
2 b. Testimony of Margaret Belknap. (Attached as Appendix B.)
3 c. Statement of Officer Charles Gassett. (Attached as Appendix C.)
4 d. Statement of Officer Jason Winner. (Attached as Appendix D.)
5 e. Statement of Officer Bryan Houser. (Attached as Appendix E.)
6 f. Alleged Video of the Mass Arrest. (Attached as Appendix J.)
7 g. Court's Instructions to the Jury in State v. Margaret Belknap, #10-1-00528-9.
8 (Attached as Appendix F.)
9 h. Felony Judgment and Sentence for State v. Margaret Belknap, #10-1-00528-9.
10 (Attached as Appendix G.)

11 10. This discovery is attached and incorporated herein because it (and not any
12 paraphrasing or summary by either party) is the best evidence of the facts that are
13 undisputed for the purpose of this motion.

14 11. That evidence is partially reproduced (in relevant part) here:

15 a. On direct examination, Mr. Duran gave the following testimony:

16 Q. At any time **did you see** Margaret kick anyone?

17 A. No. From the position I was sitting, she – **from what I saw**, she was
18 not able to kick anybody because there was somebody laying on top of
19 her.

20 Q. **Did you see** her attempt to kick anyone?

21 A. No.

22 (Emphasis added.) Appendix A at 5-8.

23 During the cross-examination conducted by Senior Deputy
24 Prosecuting Attorney Jack Jones, the following testimony was also given:

25 Q. Did she also have a kerchief around her neck?

26 A. At one point, yes.

Q. You indicated that you were just a few feet from her, and you
didn't ever see her kick anybody; is that correct?

A. Yes.

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Q. All right. And you also testified that you were sitting on the ground, and you had your hands –

A. On top of my head.

Q. – on top of your head?

A. Yes.

Q. Okay. And so you must have been looking right at Ms. Belknap, then?

A. Yes.

Q. And you said that there was someone that was on top of her almost the whole time?

A. Yes.

(Emphasis added.) Appendix A at 10-12.

- b. Ms. Belknap testified, but did not directly or circumstantially contradict Mr. Duran’s claim that **he did not see** her kick anyone. Appendix B.
- c. The reports of Officers Gasset, Winner, and Houser do not mention Mr. Duran, do not describe what Mr. Duran did or did not see, and do not directly or circumstantially contradict his testimony that **he did not see** Ms. Belknap kick anyone. Appendices C-E.
- d. The video now provided in discovery was not offered by the State (or the defense) during Ms. Belknap’s Assault trial, and no foundational testimony or evidence has been submitted to any Court. Nevertheless, the defense will assume that, for purposes of this motion only, the video does in fact depict the incident for which Ms. Belknap was originally charged. Even with that assumption made, the video is not taken by Mr. Duran or from his point of view, does not clearly depict him, does not show where he was looking at any specific time, and in no way directly shows what he did or did not actually

1 see. Appendix J. At most, the video could be circumstantial evidence that
2 arguably (for purposes of this motion only) shows what Mr. Duran could have
3 seen if he had been looking in the right direction at the right time. Even then,
4 it is not direct evidence that Mr. Duran saw anything, that he interpreted
5 anything he saw as a kick by Ms. Belknap to Officer Gasset, and that he was
6 therefore testifying falsely when he said he did not see any kick.

7 e. The Jury Instructions do not mention Mr. Duran and do not instruct the jury to
8 decide whether Mr. Duran did see Ms. Belknap kick Officer Gasset.

9 Appendix F.

10 f. The Judgment and Sentence pertaining to Ms. Belknap's case does not
11 mention Mr. Duran, and does not directly or circumstantially contradict
12 testimony about what **he did or did not see**. Appendix G.

13 12. These undisputed (for the purposes of this motion only) material facts fail to establish
14 a prima facie case for the offense of Perjury in the First Degree.

15 13. In State v. Wallis,¹⁰ our Supreme Court discussed the difference between
16 circumstantial and direct evidence supporting perjury, and did so under circumstances
17 similar to that found here. The perjury charge against Wallis was based on his
18 testimony that "he **had never heard** DiLuzio make any statement or do any act
19 indicating knowledge of the sale of beer to Leo Podd on January 7, 1956". (Emphasis
20 added.)¹¹ In support of its case, the State presented testimony that DiLuzio did in fact
21 make statements and do acts acknowledging the sale of beer, but there was no
22 testimony (or direct evidence) that the accused had *heard* those statements or *saw*
23 those acts. Therefore, the Supreme Court found that there was no direct evidence to

24
25 ¹⁰ 50 Wn.2d 350 (1957).

26 ¹¹ Wallis, 50 Wn.2d at 351.

1 support the claim of false testimony, and dismissed Wallis's perjury conviction. Id. at
2 351.

3 14. Granted, in Wallis the Spokane County Prosecutor's Office acknowledged the
4 insufficiency of its evidence, stating the obvious: "how could any person testify
5 categorically that the appellant had seen something or that he had heard
6 something?"¹² The same is true here. No one but Mr. Duran can say **what he did or**
7 **did not see**. He testified that he did not see Ms. Belknap kick an officer, and there is
8 no (and could be no) direct independent evidence stating otherwise.

9 15. It is also important to note that the State had every opportunity to question Mr. Duran
10 and clarify his testimony. But the State did not show Mr. Duran (or the jury) the
11 video. The state did not ask Mr. Duran follow up questions about where he was,
12 where he was looking, and what he could see during the time captured by the video
13 footage. The state did not ask him questions about how he interprets the footage
14 captured by the video. In other words, the State had every opportunity to ask
15 questions that *might* have established that the State and Mr. Duran were in fact
16 talking about the same time and actions. The State had every opportunity to ask
17 questions that *might* have resulted in Mr. Duran saying that, categorically, no kick
18 happened. But the State did not ask such probing or precise questions. The State did
19 not ask Mr. Duran "Are you saying the kick did not occur?" Instead, the State ended
20 its short cross-examination after again confirming only that, if such a kick occurred,
21 Mr. Duran "did not see" it. Appendix A at 11. As a result, none of the evidence
22 proves that Mr. Duran's testimony was not literally true.

23 16. In State v. Olson, our Supreme Court addressed this very problem:

24 [P]erjury statutes are not to be loosely construed, nor are they to be invoked
25 simply because a witness succeeds in derailing the questioner, so long as the

26 ¹² Wallis, 50 Wn.2d at 353.

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witness speaks the literal truth. The burden is on the questioner to pin the witness down to the specific object of his inquiry. Precise questioning . . . is imperative as a predicate for perjury. ... [W]hen, as here, a witness' answers are literally true he may not be faulted for failing to volunteer more explicit information.¹³

It cannot credibly be said that Mr. Duran evaded the questions asked or did not fully answer them. Instead, he directly answered the exact questions put to him by attorneys for both the defense and the State. What is left is a transcript which demonstrates that the Certification for Determination of Probable Cause is inaccurate and that the actual evidence does not show that Mr. Duran testified falsely.

17. Because the undisputed facts, as a matter of law, fail to establish a *prima facie* case of guilt, the Perjury charge against Mr. Duran should be dismissed.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

12/23/10, Seattle, WA

Date and Place



Name

¹³ State v. Olson, 92 Wn.2d 134, 140 (1979).

APPENDIX S

2/22/08

①

0750

ST

LEAD - 22 MARCH NEXT [REDACTED] 1200

- APPLICABLE FOR PROTEST TO USE PARK NOT INCLUDING MARCH AT FRODOEN 309
- 400 people LEFT THE GET SEA, PORTLAND

* FORCE GROUPS

- (A) WILL BE IN SF FOR (B) BOOKING 21-22 "PROFUNDIZATION"
- (A) AROUND THE WORLD COMING TO RUTHER SF 16

* ALL PITCH PIPE

- PURPOSE SITTING DOWN BUSINESS COLLABOR

UNKNOWN SPECIFIC TGT W/IN 3 DAYS OF MARCH

* MARCH [REDACTED] COORDINATION PITCH PIPE

ATTENDANCE

BRENDI, CHRIS, MITCH [REDACTED]
CODY, GLEN, KATIE HAVE CARS

- UNKNOWN IF ONLY CARS ARE GOING

W/IN 7-10 CAL BUSINESSES * MITCH, CH - GLEN, KATIE, CODY, MITCH ALL FR HAVE

HAVE FRIENDS + FAMILY

* HAVE USED FLS RADIOS @ SMITH TOWER

PITCH PIPE HOUSE # 453- [REDACTED]

DREW @ 360- [REDACTED]

DREW H-C 360 [REDACTED] 27

GLEN'S CRUISE - old number @ 253- [REDACTED]

WIKY [REDACTED] - @ 206 [REDACTED]

NANCE [REDACTED] - @ 360- [REDACTED]

TOM [REDACTED] - @ 253- [REDACTED] 80

? GLEN HAS GROUP ^{FR} 225- [REDACTED]

T. MALL 15th MARCH
2 COMMITTEE - FLOWERS
- MALL

PORTLAND HAS MAJOR EVENT ON 19th

- WILL BE SEPARATE ACTIONS

ⓐ WILL BE HERE FOR

→ KATIE [REDACTED] W/P 17 5'7 110 Prol

PUNISHED
COURT MALL
EVENT

MAY SPACES [REDACTED]

→ MARTI [REDACTED] - SPEAKING PERS LEVING IN LIP

ⓑ NOT LEAVING THE SA INTERFERENCE OF

POWERS 'CLASS + COM' vs ⓐ NO GOV

2/26/08 RUC COMING TO PITCH PAPER (DIFFICULT PEOPLE)

4/27/08 ON/PA 2L SDS

* GEORGE IS IN ALBANY NOW LEFT 18th BACK MARCH 23-24th

- PLANNING COMMITTEE ALREADY HAS ALL OF TIME

SUBVILLAGE PHOTO'S OF INTERSECTION

- ⓑ THINKS OTHER CONSULTA'S (UNIVERSITY IN MIND)

ALL IS / ACCORDING TO SECURITY TIPS

* WENT UP BY BUS

> ANOTHER CONSULTA WILL BE MAY 3

* USING BLOOD & MEDICAL STUDIES TO FUND LIFE STYLE CHG

THINK / SPECULATES PETTY CRACKS

* MALL W/P 20 5'4 INCH BAW SA STRAIGHT UP SA GUY TO BILLY

EVOLGMENT >

BROWN [REDACTED] + GLEN

ATTORNEYS: BROWN [REDACTED] JOSH [REDACTED] JOHN [REDACTED] PARTLY

ⓐ PART ONLY
SHYAN [REDACTED] EODY, CONNOR (OLY), W/P MARGIE (OLY)

SHORT CURLY AND HAIR LOTS OF POROSITY IN MOUTH
HIGH STRONG EMOTIONAL CALMS (HARD) STREET MEDIC.

all R
P. DEFO
MALL
ATTORNEYS
2/16/08

PHIL [REDACTED]

- MOST LIKELY

- JOSH [REDACTED] HAS MIL TS ARMY RES COUNCIL INTOL

- WAS PUSHING ON CAR 90% GOLF

~~WAS~~ SAID - HE MASKED UP WHEN COPS CAME

- BASED ON CONVERSATION + KNOWLEDGE OF GLENN

COULD NOT REMEMBER SPECIFIC STATEMENTS

- SAID HE + COY WOULD NOT WEAR GLOVES

GLOVES

* DID NOT THINK THEY WOULD BRAGGING

- PHIL OR STEVE WAS COMPLAINTS ABOUT JORD BRICK EN

PUSHING ON CAR

- JOHN [REDACTED] WENT TO HOSPITAL BECAUSE OF

BALCON STRUCK (NOT MENTIONED)

- PHIL [REDACTED] MIGHT BE A WEAK LINK ONLY BRAGG

WENT MASKED UP

* HAD CAR, STEVE, MATCH, GLENN, COY, BENDON

U/2108

[REDACTED] @ EVERGREEN LIBRARY COUNCIL KNOW YOUR RIGHTS

TABE 5TH

- WED 55 ITOUND PHIL + MAGGIE MIGHT BRING PHIL

WILL TURN FOR SELF PRESERVATION

- MATCH SAYS PHIL WORKS FOR SCHOOL COMMS HONOR +

GETS HIGH. CHS HAS SEEN + SMELLED ME IN HQ

- HAS SMELLED IT ON BENDON

* YONGE - A/IN FOREIGN NATIONAL EVERGREEN GRAD unknown

STATUS, USED TO OR MAY LIVE @ HQ NOW DLY PART

ACTIVITY,

> SPONSORED CURRICULUM SDS OR SABOT (@ INFO FIRST & COLLEGE)

RETURNING - PATEL [REDACTED] FATHER SPONSOR

PLANS IT CUR
REG. COLLEGE

INSTRUCTORS: MATH B

- LORNE [REDACTED]

- JAY [REDACTED]

- MARGARET [REDACTED] POLSKIE

- PATRICK, GLOVER, BLISS, & HALLS + CODY

- GUY [REDACTED]

4 TABLES - OLY SDS - BRANDON [REDACTED] BRUCE [REDACTED] + JOHN [REDACTED]

- RJC -

- DJC -

> CHALLENGING ANIMAL RIGHTS ACTIVISTS - UNKNOWN MANSIONS

- PACALU COLLECTIVE

> CHANGING - RUC/DUC THROUGHT PROJECT GROUPS + POSITIVE PIRI POSITIVE

CAITE

PETER

JORDAN, JOSH PIER, JESSIE + KAITIE, KATE [REDACTED], PATRICK GLOVER

BRYAN, BRUCE, PATEL [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

44 TEST MGS 3 TEST GROUPS SCANNERS + FLOOR CELL A

RUC

* TRUSSARD ABOUT COURSES FROM AIRPORT *

* HIT HARD @ DAY 1

04/19 OIS

APPENDIX T

**FAST TRACK OFFER AND
STATE'S PROPOSED RECOMMENDATION DATE: 10-8-70**

DEFENDANT: M. DUBAN CAUSE #: 10-1-1466-1

DEF. ATTY: _____ PROSECUTOR: John M. "Jack" Jones

SRA CRIMINAL HISTORY*: SEE ATTACHED STATEMENT ON CRIMINAL HISTORY

**As a condition of acceptance of the State's offer, the Defendant must disclose any unlisted prior felony convictions, agree with the State's calculation of his criminal history and offender score, and waive any allegation that prior convictions are same criminal conduct.*

ORIGINAL CHARGE(S): PERJURY 1^o RANGE: 6-12 mos

FIRST OFFER: ON PLEA(S)

TO: AS CHARGED RANGE: _____

EXPIRES 7 days prior to the pretrial hearing

SENTENCE OPTIONS: 1st Offender; _____ standard; _____ exceptional;

30 (days) (months) Thurston County Jail or Dept. of Corrections

work release if eligible _____ EHM if eligible

other: _____

SUPERVISION:

12 months :Community Supervision, Community Custody, or Probation

ADDITIONAL CONDITIONS:

no law violations _____ random urinalysis at CCO's direction _____ no contact with victim(s)

_____ undergo inpatient/outpatient evaluation & treatment

_____ not possess or consume controlled substances w/o prescription or alcohol

_____ all standard community placement conditions

forfeit firearm(s) for destruction/disposition in accordance with state law

defendant must cooperate in prosecution of all others involved and enter into comprehensive plea agreement

other: _____

SECOND OFFER: ON PLEA(S)

TO: SAME RANGE: _____

EXPIRES the day of the actual pretrial hearing

SENTENCE OPTIONS: _____ 1st Offender; _____ standard; _____ exceptional;

_____ (days) (months) Thurston County Jail or Dept. of Corrections

_____ work release if eligible _____ EHM if eligible

other: _____

SUPERVISION:

_____ months :Community Supervision, Community Custody, or Probation

ADDITIONAL CONDITIONS:

_____ no law violations _____ random urinalysis at CCO's direction _____ no contact with victim(s)

_____ undergo inpatient/outpatient evaluation & treatment

_____ not possess or consume controlled substances w/o prescription or alcohol

_____ all standard community placement conditions

forfeit firearm(s) for destruction/disposition in accordance with state law

defendant must cooperate in prosecution of all others involved and enter into comprehensive plea agreement

other: _____

FINANCIAL OBLIGATIONS:

restitution for all charged and uncharged counts in discovery

\$200 court costs and \$100 DNA fee, \$500 crime victim compensation fund

court-appointed counsel fee and cost of incarceration fee

drug fund contribution/clean-up fee, lab fee, drug court fund

other: _____

COMMENTS:

- WARNING!!!** 1- THIS OFFER IS SUBJECT TO NO FURTHER LITIGATION OF ANY ISSUE IN THIS CASE.
2- THIS OFFER MAY BE WITHDRAWN WITHOUT NOTICE.
3- THIS OFFER MAY ONLY BE ACCEPTED BY ENTRY OF A PLEA OF GUILTY.
4. UNLESS EXPRESSLY WAIVED, A CONDITION OF THE STATE'S OFFER IS THAT DEFENDANT MUST JOIN IN THE STATE'S RECOMMENDATION, AND NOT ATTEMPT TO UNDERMINE THE STATE'S RECOMMENDATION IN ANY WAY, AND WAIVE ANY CHALLENGE TO THE OFFENDER SCORE.

10

FAST TRACK OFFER AND STATE'S PROPOSED RECOMMENDATION DATE: 10-8-10

DEFENDANT: M. BELKAWA CAUSE #: 10-1479-2

DEF. ATTY: _____ PROSECUTOR: John M. "Jack" Jones
SRA CRIMINAL HISTORY*: SEE ATTACHED STATEMENT ON CRIMINAL HISTORY

**As a condition of acceptance of the State's offer, the Defendant must disclose any unlisted prior felony convictions, agree with the State's calculation of his criminal history and offender score, and waive any allegation that prior convictions are same criminal conduct.*

ORIGINAL CHARGE(S): POSSESS 1^o RANGE: 12+ - 14 mos.

FIRST OFFER: ON PLEA(S)

TO: AS CHARGES RANGE: _____

EXPIRES 7 days prior to the pretrial hearing

SENTENCE OPTIONS: _____ 1st Offender; standard; _____ exceptional;

12 (days) (months) Thurston County Jail or Dept. of Corrections

_____ work release if eligible _____ EHM if eligible

other: _____

SUPERVISION:

N/A months :Community Supervision, Community Custody, or Probation

ADDITIONAL CONDITIONS:

_____ no law violations _____ random urinalysis at CCO's direction _____ no contact with victim(s)

_____ undergo inpatient/outpatient evaluation & treatment

_____ not possess or consume controlled substances w/o prescription or alcohol

_____ all standard community placement conditions

forfeit firearm(s) for destruction/disposition in accordance with state law

defendant must cooperate in prosecution of all others involved and enter into comprehensive plea agreement

other: _____

SECOND OFFER: ON PLEA(S)

TO: Same RANGE: _____

EXPIRES the day of the actual pretrial hearing

SENTENCE OPTIONS: _____ 1st Offender; _____ standard; _____ exceptional;

_____ (days) (months) Thurston County Jail or Dept. of Corrections

_____ work release if eligible _____ EHM if eligible

other: _____

SUPERVISION:

_____ months :Community Supervision, Community Custody, or Probation

ADDITIONAL CONDITIONS:

_____ no law violations _____ random urinalysis at CCO's direction _____ no contact with victim(s)

_____ undergo inpatient/outpatient evaluation & treatment

_____ not possess or consume controlled substances w/o prescription or alcohol

_____ all standard community placement conditions

forfeit firearm(s) for destruction/disposition in accordance with state law

defendant must cooperate in prosecution of all others involved and enter into comprehensive plea agreement

other: _____

FINANCIAL OBLIGATIONS:

restitution for all charged and uncharged counts in discovery

\$200 court costs and \$100 DNA fee, \$500 crime victim compensation fund

court-appointed counsel fee and cost of incarceration fee

drug fund contribution/clean-up fee, lab fee, drug court fund

other: _____

COMMENTS:

- WARNING!!!** 1- THIS OFFER IS SUBJECT TO NO FURTHER LITIGATION OF ANY ISSUE IN THIS CASE.
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kim@gordonsaunderslaw.com

From: Jack Jones [jonesj@co.thurston.wa.us]
Sent: Tuesday, December 28, 2010 6:41 PM
To: kim@gordonsaunderslaw.com
Subject: RE: State v. Duran

His mistake. I cannot imagine that we have anything else to negotiate on this case. I look forward to the hearing on your motion. I am sure that you understand that my offer will not be re-extended when that motion has been denied.

Thanks, Jack

>>> 12/28/10 4:26 PM >>>

Mr. Jones,

I appreciate your thought about the case and your making this offer, but I have conferred with my client and he is declining to accept it. I will be in touch soon.

Very Truly Yours,

Kim Gordon

From: Jack Jones [mailto:Jonesj@co.thurston.wa.us]
Sent: Tuesday, December 28, 2010 3:09 PM
To: Kim Gordon
Subject: State v. Duran

Ms. Gordon,

Although the closeness with which you are working with Ms. Kaplan gives me pause, I presume that there is no issue or question in your mind about your preeminent obligation to your client. I have raised the issue because I have a proposal that is potentially beneficial to your client, but detrimental to his co-defendant, Ms. Kaplan's client.

I suspect that your client meant well and was trying to help his friend, whom he thought was being picked on by the authorities. I also suspect he agreed with his co-defendant to tell the story they told at trial in an effort to get her acquitted, even though it was untrue.

Since Duran seems like he was trying to do the right thing, in a totally misguided way, when he lied for his co-defendant, and since he himself did not act out when detained by the police, I am willing

to give him the same kind of consideration Belknap got when she first assaulted police officers in California some years ago. Namely, a pretrial diversion offer that would ultimately result in dismissal of his charges. However, I would require him to fully disclose the details of his conspiracy with Belknap, and that he actually did see her assault the officer.

In other words, if Duran saw Belknap kick Officer Gasset, and later conspired with Belknap to lie to the jury during her trial about that fact, then I will offer him pretrial diversion on his current charge, upon his full disclosure of those facts, in a recorded interview, and his subsequent truthful testimony at Belknap's trial about those same facts.

Please discuss this with your client and we can discuss the matter further when you call me to discuss the case.

Thanks, Jack

APPENDIX U

**Off Post Event Threat Analysis and Update
3/2 SBCT Movement from Port of Olympia to FLW**

Executive Summary.

a. At ~0830 on 13 November, Olympia PMR members and other protesters blocked a line haul truck attempting to leave the port. Olympia police, in an effort to husband resources for the scheduled convoys on the night of 13-14 November did not respond. Protesters "controlled" access to the port throughout the day, allowing civilian movements and preventing military equipment from departing.

b. Following a vigil at 1200, a rally at 1630, a port commission meeting at 1730 and a city council meeting at 1900, protest groups were energized and implemented actions in anticipation of convoys beginning at 2100 hours. Beginning at 2100 about ~120 protestors and ~40 pro military supporters staged at Franklin and Market. The protestors (Olympia Port Militarization Resistance (PMR), Port Liberation Front (PLF), and the Women in Solidarity (40 College/young women)) surged into the intersection at 2100 to block convoy operations. The Women in Solidarity began their action when Olympia Police arrived on the scene by locking their arms and sitting in the street. The protest delayed convoy movement for approximately 90 minutes as OPD apprehended two Paddy Wagons (round trip to jail) full of protestors. OPD later called for a city bus for additional transport. OPD made > 50 arrests; we will have actual numbers following police processing.

c. The first convoy, 20 Strykers left the port via marine drive at 2230. 15 PLF/SDS/anarchists were staged to slow the convoy down providing time for pre positioned groups along the convoy route to deploy prepositioned and found materials including dumpsters; news vending machines; and other debris including concrete, large rocks, etc into the road. The debris forced the convoy to split with 5 Strykers continuing down Plum St to I-5 and 15 Strykers forced to take Pacific Ave to I-5. Escorts linked up the convoy for movement on I-5. OPD broke up the civil disturbance with the employment of OC, pepper balls, and other riot agents.

d. Throughout the period until ~0300 14 November, protestors (primarily roving groups of anarchists, PLF, and SDS members) continued actions to disrupt convoys.

e. Unknown persons broke three windows at the US Bank on 4th and Capital Way, broke one windshield and one window in two separate police cars, and one police officer was injured by rocks. There was no reported damage to military equipment.

f. Protesters spread debris on various sections of track leading to the Port of Olympia and local media is reporting that concrete was mixed and poured on the tracks as well (NOTE: Fort Lewis Police did see debris on the tracks, but can not confirm if concrete was poured)

g. The Seattle Indy Media website reported that according to the Tacoma a Fort Lewis soldier allegedly abandoned his vehicle and asked protestors to drive him to Fort Lewis since he could not get past the human blockade. (NOTE: 3/2 SBCT reports all personnel accounted for)

For Official Use Only/Law enforcement Sensitive

1. **Movement Update.** Rail operations are pending. There are ~25 vehicles still in the port requiring line haul. Olympia PD and Fort Lewis Police will begin line haul escort operations on 15 November.

2. **Force Protection Intelligence Update** (a/o 0900, 14 Nov 07).

- As of 0900, 14 Nov. protesters continue surveillance of the port and appear to be focused on determining rail movement plans.
- Protesters are comprised of two main groups; the Olympia Port Militarization (PMR) and the self described anarchists calling themselves the Port Liberations Front (PLF), and various other groups, and individuals who align themselves with these groups or take individual actions based on their beliefs. The PMR will hold a vigil at the port at 1200, a rally and March at Percival landing at 1630. There will be PMR meetings tonight to discuss police tactics last night, and plan future actions.
- If protesters decide to continue efforts to block line hauls or rail movements, tactics will continue to include the use of makeshift barricades, "sleeping dragons" [chains protected by plastic pipes], and more decentralized staging at intersections along viable routes from port to I-5.
- Olympia Police department has reported that concrete was poured on tracks leading to the Port (NOTE Ft Lewis FP is working to confirm this report)

3. **Predictive Analysis.** Protesters will attempt to block line haul movements on 15 November but will be unable to mass sufficient numbers to significantly delay or impact operations. Protesters will continue efforts to block rail lines and may attempt human blockades.

4. **Upcoming Events.**

- Line haul of equipment will resume on 15 November.
- Rail operations are pending.

5. **Threat Groups.** The below listed groups have participated in protest activities and employ the indicated tactics, techniques, and procedures (TTP)

Group	Stated Intent	Current TTP	Group Size Estimates
PMR groups, OMJP, VFP, IVAW	Protests against military use of NW ports	Maintain presence at the port, will block line haul, may block rail movement	~5-20 daily, when line haul ops begin on 15 NOV
PLF, anarchist, and SDS elements	Disrupt day to day shipments from our ports	Support barricade and human roadblocks at Port	~20-30 when line haul ops begin on 15 NOV Some of

		and route to I-5	these groups may be out tonight (14 NOV) anticipating movement
Anti-war or anti-military activists	Not linked to specific group but seize opportunities to demonstrate/confront	Attend protest activities, may adopt mob mentality	~5-15 NOV
Peaceful anti war protesters	Not linked to specific group but generally follow conscientious political themes	Peacefully protest the war, leave the area if protests turns violent	~5-15 on 15 NOV

6. Targets, Risks, & Vulnerabilities.

- Block port entrances/exits [gates] to prevent egress of military vehicles. Protestors may even climb or fasten themselves to vehicles to prevent movement
- Block railroad tracks with barriers, found materials, or people
- Provoke an inappropriate response by law enforcement to cause public embarrassment
- Garner adverse publicity against the military/war
- Localized property damage to gates or port fences
- Block convoy route at any one of six "stop lights" prior to entrance onto I-5
- Conduct protest actions or acts of vandalism along I-5 using overpasses. Vandalism could include throwing paint, shining lights to distract drivers, or other actions

7. Mitigation.

- Convoy scheduled for night movements starting at ~ 2100 13 Nov 07
- Coordinate for sweeps of rail trackage prior to train movement.
- Provide FLW law enforcement patrols [lead and chase in unmarked cars] for all convoys to provide direct communications with state and local law enforcement
- Stage and provide on-call state and local law enforcement presence/capability to prevent attempts to block port gates; conduct apprehensions as necessary
- Execute mutual aid agreements for additional law enforcement between Olympia and county/state if protestors exceed staged/on-call capabilities or based on other indicators
- Coordination with WSP for checks of overpasses and I-5 route, increase convoy interval to allow drivers to react to hazards.

8. LE Coordination & Support. Coordination continues. TF Protector (42d MP) will attend, as we have attended all state / local coordination meetings and has directly coordinated with all police jurisdictions for this event. Olympia Police Department is the lead law enforcement agency for planned military movements. Thurston County Sheriffs Office, Lacey PD, Securitas (port security), USCG (until ship leaves), and Washington State Patrol also provide security and law enforcement support based on planned mutual aid agreements.

9. **Next Coordination/Update:** Fort Lewis Force Protection Division is the lead for FP intelligence providing daily liaison and information sharing with local law enforcement, the USCG, 833d TRANS Bn (Port Support Activity), and US Army Surface Distribution and Deployment Command and 3/2 SBCT. DES PM Operations conducts daily liaison with local law enforcement, Port of Olympia management and security, and Fort Lewis elements supporting the redeployment. We will provide daily updates and additional information based on changes in police intelligence or state and local law enforcement planning advisories to I Corps leaders/staff and 3/2 SBCT during all phases of military movement.

10. **Media Links.** Local media at the port included KIRO (Channel 7) and KQBC (Fox 13 Seattle); The Olympian [newspaper] embedded a reporter with the protesters and provided periodic updates throughout the day.

http://community.theolympian.com/gallery2/main.php?g2_itemId=17966

<http://www.theolympian.com/news/story/271003.html>

11. POC for this update is Tom Rudd, FPD, 253-677-9752 or thomas.r.rudd@conus.army.mil

APPENDIX V

q4

From: Gary Michel
Sent: Tuesday, April 13, 2010 10:36 AM
To: Doug Mah; Tom Morrill
Cc: Steve Hall; Kalo Wilcox
Subject: RE: April 8 Riot

Steve Nelson had a telephone conversation with Mr. Tulloss on April 12th trying to answer all of his rhetorical questions. There is nothing further to do with this.

Gary

From: Doug Mah
Sent: Sunday, April 11, 2010 10:38 PM
To: Tom Morrill; Gary Michel
Cc: Steve Hall; Kalo Wilcox
Subject: FW: April 8 Riot

Gary and Tom –
Could you respond to this individual on my behalf regarding interagency cooperation and holding individuals responsible for their actions? Please let me know if you have questions or concerns. Thank you.

- Doug

From: Bruce Tulloss [mailto:bruce3@tulloss.com]
Sent: Sunday, April 11, 2010 12:16 PM
To: Doug Mah
Subject: April 8 Riot

This comment found attached to The Olympian article:

[31 Demonstrators Arrested](#)

published April 10, 2010

[mazook](#) wrote on 04/10/2010 11:07:22 AM

"Drew Hendricks name should lead the [suspect] list. He put on the "Cop Watch 101" workshop at evergreen at 1700 hrs. on the night of April 8th. Drew is responsible for inciting a riot. Read the "OLY BLOG" to see what these idiots are doing next."

As extremely concerned citizens, we demand that you resolve this problem immediately! You are all responsible to deal with what has happened and accept responsibility for what happens next! They are not going to stop until you stop them at their source.

The City of Olympia, the Olympia Police Department, the Evergreen State College Police Department, the City of Olympia Prosecutor's Office, the Thurston County Sheriff, the Thurston County Prosecutor's Office, the Washington State Patrol, Homeland Security and the Federal Bureau of Investigation....

You must cooperate together and renew your commitment to hold responsible to the full extent of the law all those responsible for these ongoing, organized and repeated efforts to disrupt, terrorize and harm to our community.

I want to know what is being done in this regard to prevent these anarchist terrorist thugs from continuing to freely organize and conspire to commit riot against our City and to prevent these illegal activities in the future?

Bruce Tulloss

Olympia, WA

360-701-6941

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Virus Database (VPS): 4/11/2010
Tested on: 4/11/2010 12:16:23 PM
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Thanks, Doug.

I look forward to hear their response. Meanwhile would you be willing to share the details of your position as Mayor on the matter? This is certainly not a new issue, but reoccurring and persistent concern. Regards to those organizations which seem to reside in our City, most recently groups and individuals responsible for the Port protests and the Evergreen Riot and now this: the organized Police Protest & Riots which trace from Portland through Olympia and Seattle!

What is your plan, then to now? What has worked? What has not? What do you intend to do differently now?

Bruce

From: Doug Mah [mailto:dmah@ci.olympia.wa.us]
Sent: Sunday, April 11, 2010 10:38 PM
To: 'Bruce Tulloss '
Subject: RE: April 8 Riot

Bruce -

Thank you for contacting me and expressing you concerns and sharing information. I will forward your message to the Chief of the Olympia Police Department and the City Prosecuting Attorney to reply to your questions regarding interagency cooperation. Again, thank you for contacting me.

- Doug

From: Bruce Tulloss [mailto:bruce3@tulloss.com]
Sent: Sunday, April 11, 2010 12:16 PM
To: Doug Mah
Subject: April 8 Riot

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