June 24, 2015

Ms. Julie Anderson
Pierce County Auditor
2401 S. 35th St., Room 200
Tacoma, WA 98409

Re: Filing of Statement of the Charges in favor of the recall of Pierce County Prosecuting Attorney Mark Lindquist

Dear Ms. Anderson:

This letter shall constitute the Statement of the Charges in support of the recall of Pierce County Prosecuting Attorney Mark Lindquist pursuant to Washington Constitution, Article 1, §§ 33 and 34 and RCW 29A.56.110. Pierce County Prosecuting Attorney Mark Lindquist has committed acts of malfeasance and misfeasance while in office, and has violated his oath of office. This Statement of the Charges is verified under oath, states the acts complained of in concise language, gives a detailed description including the approximate date, location and nature of each act complained of, and is signed by the person(s) making the charge.

I. *The election of Mark Lindquist as Pierce County Prosecuting Attorney.*

Mark Lindquist was re-elected as Prosecuting Attorney on November 4, 2014 with 148,467 votes, not including write-ins. The office has a four year term. The race was uncontested.[1] He was sworn into office on December 22, 2014. The oath he took reads as follows:

> I, Mark Evans Lindquist, do solemnly swear that I am a Citizen of the United States and of the State of Washington; that I will support the Constitutions and Laws of the United States of the State of Washington, and the Charter and Ordinances of Pierce County; and that I will do [sic] the best of my ability faithfully, impartially, and honestly perform and discharge the duties of the office of Pierce County Prosecuting Attorney, as such duties are prescribed by law, so help me God.[2]

The Pierce County Prosecuting Attorney is empowered by the legislature and the Pierce County Council with, and is responsible for, *inter alia*, the determination of whether criminal charges should be filed against persons accused of having committed crimes within Pierce County and

---

1 See: http://results.vote.wa.gov/results/20141104/pierce/

2 Ex. 1, Oath of Office of Prosecutor Mark Lindquist.

prosecution of all criminal charges which are filed as a result of such a determination.[3] He is "authorized by law to appear for and represent the state and the counties thereof in actions and proceedings before the courts and judicial officers."[4] The prosecuting attorney may appoint deputies "who shall have the same power in all respects as their principal."[5] "The prosecuting attorney shall be responsible for the acts of his or her deputies. . ."[6]

II. Executive Summary of the Charges.

Mr. Lindquist: (1) has violated his oath by abusing his authority as Prosecuting Attorney through a vindictive prosecution, withholding evidence, and obstruction of justice, (2) has violated state and federal employment and discrimination laws by hiring and promoting female employees based on their physical attractiveness to him, (3) committed a constitutional felony of authorizing the private use of public funds by directing Deputy Prosecuting Attorneys to provide free legal services to unions who support his effort to keep his cell phone records secret, and by paying private lawyers with taxpayer funds, (4) has intimidated and retaliated against deputy prosecutors for merely expressing disagreement with his personal vendettas and his use of the office to pursue his personal interests, including political candidates he endorses, (5) has ordered that his employees evade the Public Records Act, (6) has badly mismanaged his office, causing many criminal cases to be dismissed because of prosecutorial misconduct, (7) has assembled an Enemies List of local defense lawyers and directed his prosecutors to violate the constitutional rights of their clients to fair and equal justice, (8) has ordered his prosecutors to treat more harshly those defendants whose cases attract media, in order to gain favorable media publicity for his purported toughness on crime, (9) has created a racially hostile workplace, (10) has engaged in a conflict of interest in litigation in which both Pierce County and he are parties, including directing the county to take the legal position that it does not have to disclose his text messages and cell phone records, using taxpayer funds to hire private attorneys whom he controls and directs to uphold his personal interests, ordering his deputy prosecutors to use taxpayer-funded time and resources to prepare and file amicus briefs for unions and other groups in pursuit of his personal interests, (11) has unlawfully interfered with the right of the employees in the office to organize without interference, and (12) has abused the power of his office to damage the rights of civil servants and citizens, exposing the county to ever escalating financial losses and ongoing disruption of civil and criminal justice in Pierce County.

---

3 RCW 36.27.020; PCC 2.06.030(C)(2).

4 RCW 36.27.005.

5 RCW 36.27.040.

6 Ibid.

All of the acts by Mr. Lindquist that are summarized above and described herein were taken by him wrongfully, knowingly, and with intent. If the situation is not immediately remedied, the continuing harm to the residents of Pierce County should not be underestimated and cannot be overstated.

III. Factual and Legal Sufficiency for Recall of Mark Lindquist

A. *The constitutional right to recall.*

The right to recall elected officials is a fundamental right of the people guaranteed by article I, sections 33 and 34 (amend. 8) of the Washington Constitution. *Chandler v. Otto*, 103 Wn.2d 268, 270, 693 P.2d 71, 72 (1984). Section 33 contains the substantive right of recall and provides that "[e]very elective public officer of the state of Washington ... is subject to recall and discharge by the legal voters of the state...." Section 34 permits the Legislature to "pass the necessary laws" to carry out section 33 "and to facilitate its operation and effect without delay." Pursuant to this authority, the Legislature adopted Chapter 29.82 RCW, which was enacted "to provide the substantive criteria and procedural framework for the recall process." *Matter of Pearsall-Stipek*, 136 Wn.2d 255, 262-63, 961 P.2d 343, 347 (1998). Chapter 29.82 RCW has since been re-codified as Chapter 29A.56 RCW. Recall statutes are construed in favor of the voter, not the elected official. *In re Recall of Washam*, 171 Wash. 2d 503, 510, 257 P.3d 513, 516 (2011).

Elected officials in Washington may be recalled for malfeasance, misfeasance, and violation of oath of office. Const. art. I, §§ 33–34; RCW 29A.56.110. "Courts act as a gateway to ensure that only charges that are factually and legally sufficient are placed before the voters, but we do not evaluate the truthfulness of those charges. RCW 29A.56.140." *In re Recall of Washam*, 171 Wash. 2d 503, 510, 257 P.3d 513, 516 (2011); *In re Recall of Cy Sun*, 177 Wash. 2d 251, 255, 299 P.3d 651, 653 (2013).

B. *The requirement of factual sufficiency.*

Charges are factually sufficient if "taken as a whole they ... state sufficient facts to identify to the electors and to the official being recalled acts or failures to act which without justification would constitute a prima facie showing" of misfeasance, malfeasance, or violation of oath of office. *Chandler v. Otto*, 103 Wash.2d 268, 274, 693 P.2d 71 (1984). "Voters may draw reasonable inferences from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations." *In re Recall of West*, 155 Wash.2d 659, 665, 121 P.3d 1190, 1194 (2005); *In re Recall of Washam*, 171 Wash. 2d 503, 514, 257 P.3d 513, 518 (2011).

A charge is factually sufficient if the facts "establish a prima facie case of misfeasance, malfeasance or violation of the oath of office" and are "stated in concise language and provide a detailed description" in order to "enable the electorate and a challenged official to make

informed decisions." *In re Recall of Telford*, supra (quoting *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003)(citing *Cole v. Webster*, 103 Wn.2d 280, 285, 692 P.2d 799 (1984); *Chandler*, 103 Wn.2d at 274, 693 P.2d 71)). In this context, "prima facie" means that, accepting the allegations as true, the charge on its face supports the conclusion that the official committed misfeasance, malfeasance, or a violation of the oath of office. *In re Recall of Wade*, 115 Wn.2d 544, 548, 799 P.2d 1179, 1181 (1990).

RCW 29A.56.110 requires that "the person ... making the charge ... have knowledge of the alleged facts upon which the stated grounds for recall are based." There is no requirement that the petitioner have firsthand knowledge of the facts. Rather, he or she must have some knowledge of the facts underlying the charges. *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170, 172 (2003); *In re Recall of Ackerson*, 143 Wn.2d 366, 372, 20 P.3d 930, 933 (2001). When the charge is violation of law, the Supreme Court has repeated that the petitioner must have knowledge of facts indicating that the official intended to commit an unlawful act. *Matter of Pearsall Stipek*, 136 Wn.2d 255, 263, 961 P.2d 343, 347 (1998).

The Court may use supplemental materials to determine whether there is a factual basis for the charge. *In re Recall of West*, 155 Wn.2d 659, 665-66, 121 P.3d 1190, 1193-1194 (2005). It may go outside the petition to determine whether there is a factual basis for the charge. *In re Recall of Anderson*, 131 Wn.2d 92, 95, 929 P.2d 410, 412 (1997).

C. *The requirement of legal sufficiency.*

To be legally sufficient, the charges "must specifically allege substantial conduct" amounting to misfeasance, malfeasance, or violation of the oath of office. *In re Recall of Washam*, 171 Wash. 2d 503, 514-15, 257 P.3d 513, 518 (2011). The legal sufficiency requirement protects officials from being "recalled for appropriately exercising the discretion granted him or her by law." *Chandler,* 103 Wash.2d at 274, 693 P.2d 71. "Officials may not be recalled for their discretionary acts absent manifest abuse of discretion." *In re Recall of Washam*, 171 Wash. 2d 503, 515, 257 P.3d 513, 518 (2011).

D. *Grounds for recall*.

The definitions of misfeasance, malfeasance and violation of the oath of office are found in RCW 29A.56.110:

For the purposes of this chapter:

(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, “misfeasance” in office means the performance of a duty in an improper manner; and

(b) Additionally, “malfeasance” in office means the commission of an unlawful act;

(2) “Violation of the oath of office” means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

IV. Acts and omissions constituting the Statement of the Charges

The acts for which this Statement of the Charges is brought are divided into the following general factual categories. Together, the charges amount to an indictment against Mr. Lindquist that he has conducted himself, while in office, in a manner that constitutes misfeasance, malfeasance and/or violation of his oath of office.

A. Mr. Lindquist has violated his oath by abusing his authority as Prosecuting Attorney through a vindictive prosecution, withholding evidence, and obstruction of justice.

On December 9, 2010, Mr. Lindquist’s office filed charges of child sex abuse against Lynn Dalsing.[7] The sole basis of the charges against Ms. Dalsing was a single photograph depicting a sex act between an unidentifiable adult female and a female child.[8] Deputy Prosecuting Attorney (“DPA”) Lori Kooiman declared under oath that the photograph depicted Lynn Dalsing abusing her own daughter in Ms. Dalsing’s bedroom. That statement was knowingly false when made.[9] The face of the white adult is not identifiable. Ms. Dalsing is Hispanic. Ms. Kooiman’s affidavit of probable cause attributes to Pierce County Detective Heishman that the setting of the photo was Ms. Dalsing’s bedroom.[10] There is no basis in the reports relied upon by DPA Kooiman for the assertion that the background of the photo depicts Dalsing’s bedroom.[11] The photograph was part of a known series of pornographic photographs of children and unrelated to Ms. Dalsing, which Pierce County Detective Michael Ames, a forensic computer analyst, had previously stated in police reports.[12] The photograph was date-stamped before the year in which Ms.

---

7 Ex. 2, Memorandum in Support of Filed Grievance, pp. 1, 19, 21.

8 Ibid, pp. 1, 22.

9 Ibid, pp.1, 22, 33.

10 Ibid, pg. 22, fn. 5.

11 Ibid, pg. 22, 33.

12 Ibid, pg. 22, 33.

Dalsing's daughter was born and before Ms. Dalsing purchased the residence.[13] It was recovered from a computer in the Dalsing residence.[14]

Ms. Dalsing had been in jail since December 2010.[15] On December 29, 2010, Ms. Dalsing's lawyer, Mr. Gary Clower, signed a protective order entitling him to the photograph.[16] Mr. Clower repeatedly requested the photo over seven months before the scheduled trial date of July 12, 2011, expressly informing the prosecutor that Ms. Dalsing insisted that she was not depicted in the photograph.[17] He finally received it a couple of weeks before the scheduled trial date.[18] In early May, 2011, DPA Kooiman was purportedly unable to locate the protective order that Mr. Clower signed over four months previously. He signed another on May 6, 2011.[19] On that date, for the first time, DPA Kooiman contacted the Pierce County Sheriff's Department to provide the photograph to Mr. Clower.[20] Mr. Clower received the photograph on May 31 or June 1.[21] He informed the prosecutor that Lynn Dalsing's husband, who had pled guilty to the rape of their daughter, had stated that the photo was from a known child pornography series.[22]

On June 9, 2011, Detective Ames sent an email to Detective Heishman that was forwarded the same day to DPA Kooiman.[23] He wrote that he had, several months prior, forensically examined the Dalsing home computer and analyzed the contents.[24] Detective Ames expressly stated that the woman in the photograph was not Ms. Dalsing, and that there was "definitely no link to her

---

13 Ibid, pg. 23, 34.

14 Ibid, pg. 22, 33.

15 Ibid, App. 6, pg. 6, ll. 7-8.

16 Ibid, pp. 25, 26, App. 7A.

17 Ibid, pg. 26, App. 5, pg. 14, ll. 5-8, pg. 15, ll. 4-11.

18 Ibid, pg. 26, App. 5, pg. 14, ll. 7-8.

19 Ibid, pg. 26, App. 10.

20 Ibid, pg. 26, App. 11.

21 Ibid, pg. 26.

22 Ibid, pg. 26.

23 Ibid, pg. 28, App. 4.

24 Ibid, pg. 28, 38.

[Lynn Dalsing] and the child porn."[25] DPA Kooiman responded in an email the same day: "I do have to provide your e-mail to defense."[26] [27]

She did not.[28] DPA Kooiman continued the prosecution of Ms. Dalsing. ***Thirty three days*** after Detective Ames had told her in no uncertain terms that there was ***no basis*** to believe that Ms. Dalsing had committed any crime, on July 12, 2011 DPA Kooiman appeared in court on the trial date and asked for a continuance of the trial date. ***Ms. Dalsing was still in custody***.[29] DPA Kooiman wanted additional time to investigate further.[30] She did not tell the trial judge or Mr. Clower that Detective Ames had told her, thirty-three days before, that there was "definitely no link" between Ms. Dalsing and child pornography on the home computer.[31] Instead, she misrepresented to the court that she could lay the foundation for the admission of that evidence and go to trial on it before a jury.[32] She further stated that there was enough circumstantial evidence for her to be convicted of possession of child pornography.[33] DPA Kooiman made those statements to the court knowing them to be false.[34] In the Exculpatory Emails, Detective Heishman asked Detective Ames: "Pros. are wondering if you were able to tell if Lynn Dalsing had any type of account or files on the computers so we can charge her with the possession also?"[35] Detective Ames replied: "No, it appeared that he [Lynn Dalsing's husband] was the computer person. There is no way you can get by the defense that she will use which will be it

---

25 Ibid, pg. 23, App. 4.

26 Ibid, pg. 23, App. 4.

27 Together, these emails shall be referred to as the "Exculpatory Emails".

28 Ibid, pg. 28, App. 5, pg. 28, ll. 10-18; App. 12, pg. 1, ll. 23-26, pg. 2, ll. 1-5, pg. 3, ll. 17-26.

29 Ibid, App. 5, pg. 4, ll. 14-16, 23-25, pg. 14, ll. 7-8, pg. 26, ll. 7-13, 21-23.

30 Ibid. App. 5, pg. 7, ll. 12-20, pg. 8, ll. 11-21, pg. 9, ll. 2-3, pg. 10, ll. 10-13, ll. 17-25, pg. 11, ll. 21-25, pg. 12, ll. 1-2, pg. 19, ll. 13-25.

31 Ibid, pg. 24, App. 4.

32 Ibid, pg. 9, ll. 17-19, pg. 17, ll. 21-25, pg. 18, l. 1.

33 Ibid, App. 5, pg. 11, ll. 10-15.

34 Ibid, pg. 26, ll. 11-14, App. 4, pg. 2.

35 Ibid, App. 4, pg. 2.

was him and especially now that he is pleading to it. I could easily link him to the child porn but not her. No way do I want to go back into that case to look for something that I cannot prove. Definately [sic] no link to her and the child porn other than the one picture but we can't see her so no way to prove that either. I did look hard at the porn that was downloaded from the internet and nothing leads back to her."[36] The judge denied the motion to continue the trial date, but because another trial had started in that courtroom, he set the trial of Ms. Dalsing to begin on July 25.[37] Ms. Dalsing was released on her own recognizance.[38] The next day, on July 13, 2011, Mr. Lindquist's office dismissed the charges against Ms. Dalsing without prejudice.[39]

On March 19, 2012, Ms. Dalsing sued Pierce County for false arrest, false imprisonment, and malicious prosecution in King County Superior Court.[40] DPA Richmond represented Pierce County.[41] In October, 2012, Detective Ames forwarded to DPA Richmond the Exculpatory Emails in which he had informed DPA Kooiman that there was no evidence that Ms. Dalsing had committed a crime at all.[42] DPA Richmond did not provide the Exculpatory Emails to Mr. Diamondstone, Ms. Dalsing's lawyer.[43] Mr. Diamondstone took the deposition of Detective Ames on February 14, 2013.[44] Detective Ames testified that the evidence failed to establish probable cause that Ms. Dalsing had committed a crime.[45] During his deposition, Detective Ames realized that DPA Richmond had not provided to Mr. Diamondstone the Exculpatory

---

36 Ibid, App. 4, pg. 2.

37 Ibid, App. 5, pg. 33.

38 Ibid, App. 5, pg. 33, l. 10.

39 Ex. 3 (Findings of Fact, Conclusions of Law, and Order of Dismissal by Judge Murphy in *State v. Dalsing*, May 28, 2015), pg. 8, ll. 4 – 6.

40 Ibid, pg. 8, ll. 11-14, Ex. 2, pg. 41.

41 Ex. 2, pg. 41.

42 Ibid, pg. 41, App. 31, pg. 5, ll. 3-17, Ex. 1.

43 Ibid, pg. 44, App. 19, pg. 1.

44 Ibid, pg. 41, App. 14, pg. 1.

45 Ibid, pg. 41, App. 14, pg. 49, ll. 16-25, pg. 51, ll. 7-13, ll. 20-25, pg. 52, ll. 1-5, pg. 77, ll. 20-25, pg. 78, ll. 1-25, pg. 79, ll. 1-5, pg. 80, ll. 2-4, pg. 88, ll. 23-25, pg. 89, l. 1, ll. 16-25, pg. 90, ll. 1-4, pg. 96, ll. 17-25, pg. 97, ll. 1-3, ll. 13-22.

Emails.[46] DPA Richmond repeatedly instructed Detective Ames not to answer questions intended to discover what he had communicated to DPA Kooiman.[47] Detective Ames felt that he could not clear his name of the allegation that he had misidentified Ms. Dalsing as the woman in the photograph.[48] He therefore filed a motion to require the county to pay his attorney fees incurred in hiring outside counsel as a result of the effort by DPA Richmond of "protecting [Mr. Lindquist's] staff at the expense of the Sheriff's department and [Ames] personally."[49] Detective Ames wanted the Exculpatory Emails turned over to Ms. Dalsing and sought an order in the litigation compelling their production.[50]

Following the deposition, Ms. Dalsing herself sought an order compelling the production of the Exculpatory Emails.[51] DPA Richmond asserted, inter alia, that the Exculpatory Emails constituted privileged work product, and that DPA Kooiman and DPA Lewis could not be deposed.[52] On April 22, 2013, King County Superior Court Judge Andrus ordered the county to make DPA Kooiman and DPA Lewis available for depositions, and ordered the disclosure of the Exculpatory Emails.[53]

DPA Richmond petitioned the Court of Appeals for discretionary review of Judge Andrus' discovery order.[54] The Court of Appeals Commissioner granted a temporary stay of discovery pending a decision from the Court of Appeals about whether it would accept review.[55] In opposing the motion to compel the Exculpatory Emails, DPA Richmond falsely swore in a declaration: "Mr. Ames falsely states he turned over County e-mails to me that would 'clear his name and his department.'"[56]

---

46 Ibid, pg. 41, App. 15, pg. 2, ll. 3-23.

47 Ibid, pg. 41, App 14, pp. 3-4; App. 15, pg. 2, ll. 11-16, ll. 24-27, Ex. A.

48 Ibid, pg. 41, App. 15, pg. 2. ll. 3-23, pg. 3, ll. 3-8, ll. 15-19.

49 Ibid, pg. 41, App. 15, pg. 2, ll. 17-20.

50 Ibid, pg. 42.

51 Ibid, pg. 42, App. 19, pg. 1.

52 Ibid, pg. 42, App. 19, pg. 2.

53 Ibid, pg. 42, App 19, pg. 1.

54 Ibid, pg. 42.

55 Ibid, pg. 42.

The criminal investigation of Ms. Dalsing was renewed shortly after DPA Richmond was ordered by Judge Andrus on April 22, 2013 to disclose the Exculpatory Emails and to make DPA's Kooiman and Lewis available for their depositions.[57]

DPA Richmond informed Judge Andrus that the criminal investigation of Ms. Dalsing had been referred to the Snohomish County Prosecutor because of the conflict of interest on the part of Pierce County as a result of the civil lawsuit.[58] He filed a declaration by DPA Ausserer in which Mr. Ausserer, the Supervising Attorney for the Sexual Assault Unit of the Pierce County Prosecuting Attorney's Office, stated that the Pierce County Prosecuting Attorney's Office had recused itself from the criminal case, and had referred the investigation to other law enforcement agencies [the Lakewood Police Department], with prosecutorial oversight by the Snohomish County Prosecutor's Office.[59] He told the court that the victim, K.D., "has revealed additional more detailed information incriminating Ms. Dalsing specifically."[60]

Lakewood Police Detectives Eggleston and Bowl conducted the investigation.[61] They concluded that "the information [K.D.] provided . . . about her mother's knowledge and or involvement with the abuse was not new information and had been disclosed in the forensic interview."[62] The Snohomish County Prosecutor's Office then reviewed the case and determined that K.D. had not made any new disclosures as had been stated by DPA Ausserer in his sworn declaration.[63] The Snohomish County Prosecutor declined to conduct a new interview with K.D., declined to file charges against Lynn Dalsing, reported that there was no new evidence to support such charges, and sent a formal "Decline Notice" on June 11, 2013 to Lakewood Police Detective Brent Eggleston.[64]

---

56 Ibid, pg. 42, App. 16, pg. 2, ll. 6-7.

57 Ibid, pg. 45, App. 24, pg. 2, ll. 14-18, App. 37, pg. 14, ll.21-23.

58 Ibid, pg. 47-48, App. 37, pg. 25, ll. 18-19; Ex. 3, pg. 10, ll. 3-14.

59 Ex. 2, pg. 48, App. 24, pg. 2, ll. 14-18.

60 Ibid, App. 24, pg. 1, ll. 22-25.

61 Ibid, pg. 49.

62 Ibid, pg. 49, App. 29, pg. 13 (Page number is the pdf page).

63 Ibid, pg. 49, App. 30.

64 Ibid, pg. 49, App. 30.

Judge Andrus ruled on July 22, 2013 that "Pierce County's discovery conduct was not substantially justified," and ordered the county to pay Detective Ames' legal fees.[65]
On July 23, 2013 – over a month after the Decline Notice by the Snohomish County Prosecutor – DPA Richmond appeared before Judge Andrus in the civil suit seeking to continue the discovery stay.[66] Judge Andrus asked him if any charging decision would be made by the Snohomish County Prosecutor. DPA Richmond said: "I -- I'm not sure about that."[67] When pressed by Judge Andrus if any such charging decision would be made by the Pierce County Prosecuting Attorney's office, DPA Richmond replied: "That's what I don't have the answer to. . . But I don't know – if there's a decision to go forward in charging, *I don't know which agency is going to make that charge*."[68] The following dialogue then took place:

> THE COURT: Because I was under the impression from you and from Mr. Ausserer that a decision had been affirmatively made that it would not be the Pierce County Prosecuting Attorney's office, and that you with someone had decided that, given the pendency of this civil lawsuit, that your organization – particularly when we're talking about the disqualification, that your organization was – recognized a conflict and had no intention to participate in a charging decision. So is that no longer the case?
>
> MR. RICHMOND: I can't answer that, Your Honor, because I haven't talked to Mr. Ausserer about that particular point. All I know – and this has been my only involvement. And I sent Mr. Diamondstone an email about this. He said this matter's been closed by Snohomish so let's move forward [with discovery in the civil case]. And he asked me to confirm or not confirm that. And that's when I went back to Mr. Ausserer, and he referred me to Lakewood police. *And the Lakewood police said that they were investigating this matter on additional information*.
>
> THE COURT: Right. *But apparently, additional information that came from Ausserer*.
>
> MR. RICHMOND: No. I don't – well –

---

65 Ibid, pg. 43, App. 22, pg. 6. On August 12, 2013, Judge Andrus denied the county's motion for reconsideration.

66 Ibid, pg. 50, App. 34, pg. 1.

67 Ibid, pg. 51, App. 34, pg. 5, ll. 4-19.

68 Ibid, App. 34, pg. 6, ll. 6-11.

THE COURT: Well, that's what he said. He said following Snohomish County's review where [the Snohomish County DPA] said, "I don't see any need to reinterview KD. Our office has obtained and provided additional information regarding Ms. Dalsing's possible crimes to law enforcement," *so that means Mr. Ausserer is somehow involved, right? I mean, that's what he says*.

MR. RICHMOND: Uh-huh.

THE COURT: And that he somehow obtained information and turned it over to law enforcement to investigate. Am I misreading his declaration there?

MR. RICHMOND: No. That did happen. *And I know where the information came from*, and I know what he – I think he turned it over. But the question that you want answered, I think, is is Pierce County going to bring charges? And I don't have the answer for that. . .

THE COURT: The problem that I see is I have no – because I have no idea what's going on in this investigation, I have no idea whether there really is anything to investigate, whether this is just a way of trying to keep discovery from happening pending your appeal, which I'm sure is what the plaintiffs suspect. Whether I conclude this or not, I'm not drawing any conclusions. But you can see their suspicion here as to you're just dragging this out so that whether there's really a true, true investigation worthy of charges, this is a way of postponing having to comply with my underlying order, which if that's what's going on would obviously be a serious concern of mine.

. . . .

MR. RICHMOND: But it concerns me, Your Honor, that you would think that, as an attorney, that I would be part of causing a delay. I mean, our obligations under the civil rules or rules of professional conduct, they're all very seriously taken.

THE COURT: I know. But I'm getting very mixed signals from you. And I appreciate that it's because you're perhaps getting very mixed information from the prosecuting criminal side. But I feel as if I'm getting very different information with each new pleading. And that's a concern to me. Because obviously, Mr. Ausserer appears to have made certain representations in prior declarations that now seem inconsistent with what he's saying in his current declaration, and you know from a lawyer's perspective that when you have two inconsistent declarations, it does reflect on someone's credibility. And I'm trying to assess the credibility of a lawyer who has never appeared before me. But I'm getting very different messages from him, and that is a concern to me.

. . . .

> THE COURT: I understand. Because, you know, this is ultimately what I feel I have to decide: Is there really a criminal investigation going on such that continuing the stay of discovery makes imminent sense, or is there something else going on behind the scenes that would explain why I'm getting such different messages from Pierce County's criminal side? That's really what my biggest concern is.[69]
> *(Emphasis added)*.

The "additional evidence" provided by the Pierce County Prosecutor's office was a jailhouse statement by one of the two men convicted of sexually abusing Ms. Dalsing's daughter, completely discredited by his attempt to bargain for his release from prison.[70] Judge Andrus continued the stay of discovery until October 8, 2013, based on Detective Eggleston's declaration.[71]

Within one month of Judge Andrus' August 12, 2013 order denying reconsideration of her order that Pierce County reimburse Detective Ames his attorney fees, on September 18, 2013, Mr. Lindquist, through his Assistant Chief Criminal Deputy, notified Detective Ames that, henceforth, he would disclose, to defense lawyers for each defendant on whose cases Detective Ames worked, that Detective Ames had submitted "signed declarations in a civil case which contained assertions which are disputed in signed declarations filed by the civil DPAs assigned to that case."[72] The declarations which Mr. Lindquist alleged were false were Detective Ames' declarations in which he stated that he had provided the Exculpatory Emails to DPA Richmond.[73]

---

69 Ibid, App. 34, pp. 6, ll. 12-25, pg. 7, ll. 1-25, pg. 8, ll. 3-15, pg. 10, ll. 15-25, pg. 11, ll. 1-9, ll. 14-21.

70 Ibid, pg. 52.

71 Ibid, pg. 51, Ex. 3, pg. 15, ll. 4-7.

72 Ibid, pg. 54, App. 18. This type of disclosure, called a "Brady disclosure," is named for *Brady v. Maryland*. In *Brady*, the U.S. Supreme Court held that prosecutors are required to disclose to defendants material exculpatory evidence, including evidence that would allow the defendant to impeach the credibility of a prosecution witness. Police officers who have been dishonest are commonly called "Brady cops." Prosecutors are required to notify defendants and their attorneys whenever a law enforcement official involved in their case has a sustained record for knowingly lying in an official capacity. Mr. Lindquist's labeling Detective Ames a "Brady cop" carved a scarlet letter on his forehead.

After Mr. Lindquist labeled Detective Ames a Brady cop, Detective Ames produced proof that he had forwarded to DPA Richmond the Exculpatory Emails.[74] DPA Richmond has since admitted that Detective Ames had, indeed, provided him with the Exculpatory Emails.[75]

The Court of Appeals denied discretionary review of Judge Andrus' order compelling discovery on December 18, 2013.[76] Thirty days later, on January 17, 2014, DPA Richmond filed a motion with the Court of Appeals to request that that ruling be modifed.[77] His motion for modification was denied on March 25, 2014.[78] As a result, Judge Andrus' order requiring the county to disclose the Exculpatory Emails and to make DPA's Kooiman and Lewis available for their depositions took effect.[79]

Three days after the Court of Appeals allowed Judge Andrus'order requiring the disclosure of the Exculpatory Emails and allowing depositions to take effect, on March 28, 2014 DPA Ausserer filed new, greatly-expanded criminal charges against Lynn Dalsing.[80] She was now charged with eight counts: two counts of Rape of a Child in the First Degree, three counts of Child Molestation in the First Degree, and three counts of Sexual Exploitation of a Minor.[81] DPA Ausserer alleged a novel theory in his Supplemental Declaration in Support of Probable Cause: that Ms. Dalsing acted as an accomplice to her husband's sexual abuse of the children; although

---

73 Ibid, pg. 54.

74 Ibid, App. 31, pg. 5, ll. 3-17, Ex. 1. Eight months later, DPA Richmond would try to square the circle, filing a declaration on May 12, 2014: "I have never denied receiving the June 9, 2011 email. Instead, I stated that it was given to me at the October 12, 2012 meeting." Ibid, pg. 44, App. 17, pg. 2, ll. 2-3.

75 Ibid, App. 17, pg. 2, ll. 2-3.

76 Ibid, pg. 44; Ex. 3, pg. 16, ll. 14-16.

77 Ex. 2, pg. 44; Ex. 3, pg. 16, ll. 22-23.

78 Ex. 2, pg. 44; Ex. 3, pg. 17, ll. 5-8.

79 Ibid, pg. 44. Mr. Lindquist also sought discretionary review in the Washington Supreme Court, which was denied by the Supreme Court Commissioner on October 28, 2014. Ibid, App. 45.

80 Ibid, pg. 44, App. 20.

81 Ibid, pg. 44, App. 20.

DPA Ausserer could not provide a single other example in Pierce County of pursuit of child abuse charges on the theory of accomplice liability.[82] The filing of new criminal charges halted discovery in the civil litigation.[83]

On March 30, 2015, Pierce County Superior Court Judge Edmund Murphy dismissed the criminal case of *State v. Lynn Dalsing* because of prosecutorial vindictiveness. Dismissal under CrR 8.3(b) is an extraordinary remedy, ordered in the furtherance of justice, due to arbitrary action or governmental misconduct where there has been prejudice to the rights of the accused which materially affects the accused's right to a fair trial.[84] Findings of Fact, Conclusions of Law, and Order of Dismissal (the "Lindquist Misconduct Findings") were entered on May 28, 2015.[85] The Lindquist Misconduct Findings are 28 pages long. In the Lindquist Misconduct Findings, Judge Murphy held that Ms. Dalsing had proved "a very real likelihood of prosecutorial vindictiveness" by Mr. Lindquist's office when it filed new, greatly-expanded criminal charges against her for suing the county and demanding the Exculpatory Emails.[86]

Mr. Lindquist violated his oath of office in his vindictive prosecution of Lynn Dalsing, withholding of evidence, and obstruction of justice. His misconduct also amounts to misfeasance and malfeasance in office. The Lindquist Misconduct Findings, *a priori*, are factually and legally sufficient to support Mr. Lindquist's recall from office. After notice and a hearing, Pierce County Superior Court Judge Murphy entered 28 pages of written findings of fact and conclusions of law detailing the draconian effort by Mr. Lindquist to squelch Ms. Dalsing's exercise of her constitutional right to seek redress from the courts for false arrest and imprisonment. Mr. Lindquist used the vast power of his office to file against her new, expanded charges carrying the possibility of life imprisonment. Mr. Lindquist abused his power. There was no new evidence to support the charges. The only new developments were the civil case itself and a discovery request for the Exculpatory Emails. The Snohomish County Prosecutor declined to file charges after Mr. Lindquist referred the case there because of the conflict of interest Lindquist had because of Ms. Dalsing's civil lawsuit against Pierce County. Unsatisfied with that result and insatiable for retribution, Mr. Lindquist snatched the case back; conflict of interest be damned.

---

82 Ibid, pg. 44.

83 Ibid, pg. 44, Ex. 3, pg. 17, ll. 18-19.

84 Ex. 2, pg. 45, App. 23.

85 Ex. 3.

86 Ibid, pg. 27, ll. 23-25, pg. 28, ll. 1-2.

As the elected Prosecuting Attorney for Pierce County, Mr. Lindquist *is* the office.[87] Mr. Lindquist is responsible for the acts of his deputies.[88] Mr. Lindquist personally oversaw the litigation in this case in some detail.[89] For instance, DPA Ausserer informed the Tacoma News Tribune that he believed Prosecutor Lindquist made the decision to re-file criminal charges against Ms. Dalsing.[90]

Mr. Lindquist ordered DPA Ausserer back to the office early from family leave to file the renewed charges against Ms. Dalsing.[91] The declarations signed by DPA Kooiman and DPA Lewis dated May, 12, 2014 contain false statements.[92] Mr. Lindquist participated in, failed to prevent his deputy prosecutors from, and was responsible for: (1) withholding evidence in a criminal proceeding and in a civil proceeding, to insulate the county from liability for his conduct (and that of his office) in the criminal proceeding; (2) falsely claiming that new evidence could result in refiling of criminal charges to avoid disclosing that evidence, when no new evidence existed; (3) improperly reclaiming control over the criminal case against Ms. Dalsing following Snohomish County's declination to charge, after the case was referred to Snohomish County because of the tremendous conflict of interest that Pierce County had – which conflict of interest continued to exist and had even deepened; and (4) filing new criminal charges against Ms. Dalsing based on no new evidence, dismissed by Judge Murphy as a vindictive prosecution. Mr. Lindquist's actions and inactions over a long period of time, and those of his office for which he is constitutionally and statutorily responsible, violated the constitutional rights of Ms. Dalsing under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, article I, § 22 of the Washington constitution, CrR 8.3(b), CR 26-37, and RPC 3.4, RPC 4.1. He should be removed from office.

B. Mr. Lindquist has violated state and federal law by hiring and promoting female employees based on their physical attractiveness to him.

---

87 Art. 11 § 5 of the Washington Constitution authorizes the legislature to provide for the election of a person to carry out the duties of the county prosecutor's office.

88 RCW 36.27.040; RPC 5.1.

89 Ex. 2, pg. 93.

90 Ibid, pg. 93.

91 Ex. 5, Whistleblower Complaint filed by Deputy Prosecuting Attorney Stephen Penner, pg. 3.

92 Ex. 2, App. 9.

Mr. Lindquist has given preferences in employment to attractive younger women over more qualified candidates.[93] Mr. Lindquist has jokingly used the phrase "the person meets our hiring criteria" as a euphemism for being physically attractive.[94]

Every year, the Appeals Division hires two new law students for two-year internships.[95] In 2013, Lindquist passed over the top choice of the head of the Appeals Division and selected two lesser-ranked choices because the top candidate was overweight.[96] One of these two choices then decided at the last minute not to start the position, leaving the Appeals Division one intern short for the next two full years.[97]

In 2013, Lindquist hired an attractive woman in her 20's, trained as a legal assistant, to fill a new position he created: 'public information officer'.[98] She had no previous experience in media relations.[99] The basis for the decision appeared to be that she was young and physically attractive.[100] Lindquist set her up right next to his office.[101] The young woman, apparently overwhelmed, soon quit after writing press releases about some of the county's most horrific crimes.[102]

In 2013, a legal assistant in the homicide unit left.[103] The homicide legal assistants sit in an area Lindquist walks by to and from his office.[104] In discussing job qualifications, Lindquist stated

---

93 Ex. 5, pg. 3.

94 Ibid.

95 Ibid.

96 Ibid.

97 Ibid.

98 Ibid.

99 Ibid.

100 Ibid.

101 Ibid.

102 Ibid.

103 Ibid.

104 Ibid.

that his hiring decision would be partially based on the fact that he would have to walk by the person every day.[105]

In 2014, three full-time Deputy Prosecuting Attorney positions became available in the Misdemeanor Division. Misdemeanor Chief Timothy Lewis ranked the candidates, all of whom had been working in the division as interns or volunteers.[106] One was [redacted].[107] Mr. Lewis ranked her seventh out of seven, expressing concerns about her competence.[108] Mr. Lindquist chose [redacted] anyway, instructing Mr. Lewis to make her "passable."[109] The only apparent basis for the decision was that Mr. Lindquist found her attractive.[110] Since then, [redacted] has lost almost all of her trials and does not appear able to do her job competently, despite the efforts of supervisors and mentors to help her.[111]

Mr. Lindquist violated his oath of office by hiring and promoting female employees based on their physical attractiveness to him. He has a duty imposed by law to refrain from engaging in discriminatory hiring practices. RCW 49.60.180; PCC 3.16.130. He knowingly failed to perform the duty imposed on him to refrain from such discriminatory practices. His misconduct also amounts to misfeasance and malfeasance in office. It is wrongful conduct that affects, interrupts, or interferes with the performance of his official duty; e.g., ensuring that all laws are faithfully enforced. Mr. Lindquist has performed his duty in an improper manner and has committed unlawful acts in the course of employment decisions with respect to his office.

C. Mr. Lindquist committed a constitutional felony of authorizing the private use of public funds by directing Deputy Prosecuting Attorneys to provide free legal services to unions who support his effort to keep his cell phone records secret, and by paying private lawyers with taxpayer funds.

An amicus curiae brief was filed with the Washington Supreme Court in *Nissen v. Pierce County* on behalf of the Washington Education Association, the Washington Council of Police and

---

105 Ibid.

106 Ex. 5, pp. 3-4.

107 Ex. 5, pg. 4.

108 Ibid.

109 Ibid.

110 Ibid.

111 Ibid.

Sheriffs, the Washington State Patrol Troopers Association, the Washington State chapters of the American Federation of State, County, and Municipal Employees and the International Association of Fire Fighters, and the Pierce County Prosecuting Attorneys Association (PCPAA), their union.[112] Mr. Lindquist directed Deputy Prosecuting Attorneys Dan Hamilton, Stephen Penner, Dawn Farina, Mike Sommerfeld (among others) to write the brief.[113] It was drafted to support the effort of the county, the Appellant, and Mr. Lindquist, who personally intervened in the case, to enable Mr. Lindquist to avoid turning over his text messages and cell phone records that may be relevant in that case.[114] The drafting of the amicus brief was coordinated with outside counsel, who also reviewed the draft and gave advice.[115]

Mr. Penner questioned the legality and ethics of non-union management DPAs drafting a brief for the PCPAA and the other unions.[116] DPA Hamilton told him that it was okay because he and DPA Sommerfeld were PCPAA members.[117] At the end of the day, DPA John Sheeran expressed concern to Mr. Penner that drafting briefs for outside agencies might constitute the private use of public funds.[118] The making of private use of public funds is a constitutional felony under art. XI, §14 of the Washington Constitution. The next morning, Mr. Penner asked Ms. Farina, Mr. Lindquist's Chief of Staff, about this. Ms. Farina shrugged off his concerns.[119] Mr. Penner then asked Denise Greer, Assistant Chief of the Civil Division, who stated that paying the outside attorney, Mr. Phil Talmadge, to review the amicus brief was probably more problematic because that would be a direct payment.[120] She then said that since the Deputy Prosecuting Attorneys were salaried, Mr. Lindquist could claim they were working on the brief during their "break times"; despite the fact that well over a hundred employee-hours were devoted to that brief alone, all during standard work time of 8:30 a.m. to 4:30 p.m.[121]

---

112 Ex. 5, pg. 6; Ex. 6, Brief of Amicus Curiae in *Nissen v. Pierce County*.

113 Ex. 5, pg. 6.

114 Ibid.

115 Ibid.

116 Ibid.

117 Ibid.

118 Ibid.

119 Ibid.

120 Ibid.

121 Ex. 5, pg. 6.

Mr. Lindquist caused Pierce County to pay invoices for his private lawyer, Mr. Stewart Estes, who has represented him personally in the civil litigation with Detective Glenda Nissen. In addition, Mr. Lindquist has rewarded Mr. Estes and his law firm with county legal work totaling in excess of $358,000.00.[122]

By directing the payment of private lawyers for legal work for unions who support his personal interests, Mr. Lindquist has committed a constitutional felony. Wash. Const. art. XI, § 14 states: "[t]he making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law." (Underline added).

Mr. Lindquist used taxpayer funds for a purpose not authorized by law in two ways. First, he directed more than four county deputy prosecuting attorneys to spend well over a hundred employee-hours on the amicus brief alone, all during standard work time of 8:30 a.m. to 4:30 p.m.[123] That was time they were being paid by the county for work performed for six labor unions.[124] RCW 36.27.060(1) prohibits Pierce County Deputy Prosecuting Attorneys from engaging in the private practice of law. The 2015 Pierce County budget shows Mark Lindquist continues to increase his administrative expenditures (19.9%) to include adding three supervising attorneys, a Communications and Public Information person, and a private investigator since 2010 while reducing the number of deputies.[125] The county has not authorized Mr. Lindquist to utilize these added resources to give free legal services to labor unions who support his personal matters or for his political advantage, which are outside the express authority of a prosecutor set forth at RCW 36.27.020 and PCC 2.06.030(C)(2). Mr. Lindquist violated his constitutional, statutory, and budgetary authorization by paying county employees to provide a private benefit to labor unions.

Second, nowhere in the budget or in any other appropriation or reserve is Mr. Lindquist authorized by Pierce County to cause the county to pay his private lawyers who are representing him personally in lawsuits against the county in which he has personally intervened. Yet, he has rewarded his private lawyers over $385,000 in county legal work.[126]

---

122 Ex. 9, Public Records Request by Joan Mell dated March 12, 2015.

123 Ibid.

124 Ibid.

125 http://www.co.pierce.wa.us/DocumentCenter/Home/View/32696.

126 Ex. 9.

Mr. Lindquist has committed a constitutional felony pursuant to Wash. Const. art. XI, § 14. He has violated RCW 42.52.180, which states: "(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another." He has violated RCW 36.27.060(1), which prohibits Pierce County Deputy Prosecuting Attorneys from engaging in the private practice of law. He has violated PCC 2.06.030(C)(2), the budgetary authority granted to him by the Pierce County Council, and the resolution of the Council authorizing his employment of and payment to private lawyers. Mr. Lindquist has violated his oath, and committed misfeasance and malfeasance. The voters of Pierce County should be empowered to decide whether he should be removed from office.

D. Mr. Lindquist has intimidated and retaliated against deputy prosecutors for merely expressing disagreement with his personal vendettas and his use of the office to pursue his personal interests, including political candidates he endorses.

In the evening of April 21st, 2015, Mr. Lindquist followed DPA Steve Merrival into the parking garage, and said "I have been stalking you."[127] Lindquist said he was concerned about a Facebook post from Carolyn Merrival, Steve's wife. Mrs. Merrival posted "Come on Pierce County clean it up" and "Just to be clear. If two words start with the same letter, they do not therefore, have the same meaning. VIGOROUS is not the same as VINDICTIVE."[128] Her posts followed the Tacoma News Tribune article reporting Judge Murphy's dismissal of the charges against Lynn Dalsing for Mr. Lindquist's vindictive prosecution.[129] DPA Merrival told Mr. Lindquist that he should discuss Mrs. Merrival's opinions with her.[130] DPA Merrival shared that he had lost confidence in Mr. Lindquist because he had not maintained high ethical standards.[131] DPA Merrival told Mr. Lindquist that he agreed with his wife, and that the standard Mr. Lindquist should be following, but was not, was to seek justice, and that prosecutors must be held to the highest ethical standards.[132]

---

127 Ex. 4, Whistleblower Complaint filed by Deputy Prosecuting Attorney Steven Merrival, pg. 5; Merrival Declaration, pg. 2, ll. 23-24.

128 Ex. 4, pg. 5; Merrival Declaration, pg. 2, l. 24, pg. 3, ll. 1-3.

129 Ex. 4, pg. 5; Merrival Declaration, pg. 3, ll. 3-5.

130 Ex. 4, pg. 5; Merrival Declaration, pg. 3, ll. 5-6.

131 Ex. 4, pg. 5; Merrival Declaration, pg. 3, ll. 6-7.

132 Ex. 4, pg. 5; Merrival Declaration, pg. 3, ll. 7-9.

On May 8th, 2015, Mr. Lindquist summoned DPA Merrival into his office.[133] Mr. Lindquist suggested that DPA Merrival had a bad attitude.[134] DPA Merrival pointed out that he was concerned with the large number of prosecutorial misconduct findings in criminal cases during Mr. Lindquist's tenure as Prosecuting Attorney.[135] Mr. Lindquist minimized the violations. [136] Mr. Lindquist asked DPA Merrival that, given his "attitude", where he felt he could make a contribution in the office.[137] DPA Merrival replied that Mr. Lindquist was retaliating against him by attempting to transfer him.[138] Mr. Lindquist attempted to rationalize a legitimate basis for retaliation, stating that management literature demonstrated that transfers increase productivity.[139] The Pierce County Prosecuting Attorney's Office has had no meaningful trial advocacy training pertaining to the issues that resulted in findings of prosecutorial misconduct generally, or about the improper use of PowerPoint presentations, which led to many of those findings of misconduct.[140]

Mr. Lindquist threatened to exile DPA Leech from the felony property crime team to the juvenile division after DPA Leech spoke out at a Pierce County Prosecuting Attorney Association ("PCPAA") meeting against Mr. Lindquist's order that DPA's prepare an amicus brief in *Nissen v. Pierce County* on behalf of unions that supported Mr. Lindquist's attempt not to disclose his text messages and phone calls on his personal cell phone.[141]

DPA Clarkson testified before the Pierce County Council in opposition to Mr. Lindquist's proposal to put himself on the appointment committee for district court judges, and remove the representative from the Minority Bar Association.[142] Later, she spoke civilly to local lawyer Bryan Hershman and acknowledged his presence when she saw him, in direct violation of Mr.

133 Ex. 4, pg. 5; Merrival Declaration, pg. 3, l. 10.

134 Ex. 4, pg. 5; Merrival Declaration, pg. 3, ll. 10-11.

135 Ex. 4, pg. 5; Merrival Declaration, pg. 3, ll. 11-13.

136 Ex. 4, pg. 5; Merrival Declaration, pg. 3, l. 13.

137 Ex. 4, pp. 5-6; Merrival Declaration, pg. 3, ll. 14-15.

138 Ex. 4, pg. 6; Merrival Declaration, pg. 3, ll. 15-16.

139 Ex. 4, pg. 6; Merrival Declaration, pg. 3, ll. 16-18.

140 Ex. 4, pg. 6; Merrival Declaration, pg. 3, ll. 18-21.

141 Ex. 5, pp. 2-3.

142 Ex. 4, pg. 6; Ex. 5, pg. 9.

Lindquist's directive to shun Mr. Hershman and other defense lawyers after he and they signed declarations used by Detective Ames in his civil lawsuit against Pierce County.[143] Shortly thereafter, Mr. Lindquist exiled DPA Clarkson to the juvenile division at Remann Hall, a disfavored assignment considered to be "Siberia."[144] Mr. Lindquist started false rumors that DPA Clarkson complained that DPA Cooper micromanaged her.[145] Mr. Lindquist reprimanded DPA Clarkson for not being nice enough to his Chief of Staff Dawn Farina.[146] He also reprimanded DPA Clarkson for sending out an office wide "Thank You" when she was elected board trustee of the Tacoma-Pierce County Bar Association ("TPCBA"), and defeated Mr. Lindquist's chosen candidate, DPA John Sheeran, for the same position.[147]

The culture of the Prosecutor's Office is one of fear and bullying behavior.[148] Members of the office have been directed by Mr. Lindquist's leadership not to talk to former DPA Mary Robnett (at least without a witness), DPA John Neeb or DPA Merrival.[149] Many employees fear Mr. Lindquist.[150] They fear not visibly supporting one of Mr. Lindquist's candidates or working on one of his candidate's political campaigns.[151] They believe lack of such support would adversely affect their career.[152] Mr. Lindquist encourages DPAs to occupy positions outside of the office to advance his political interests.[153] Mr. Lindquist promised some DPAs judicial appointments in exchange for their service to him.[154] A young female DPA was visibly shaken after she was approached on a street corner by Mr. Lindquist in his Land Rover. She explained to DPA

---

143 Ex. 4, pg. 6.

144 Ex. 4, pg. 6; Ex. 5, pg. 8.

145 Ex. 4, pg. 6.

146 Ex. 4, pg. 6; Ex. 5, pg. 9.

147 Ex. 4, pg. 6.

148 Ex. 4, pg. 10-11; Ex. 5, pg. 9; Merrival Declaration, pg. 3, l. 22.

149 Ex. 4, pp. 8-9; Merrival Declaration, pg.3, ll. 23-24.

150 Ex. 4, pg. 9; Merrival Declaration, pg. 3, l. 24, pg. 4, l. 1.

151 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 1-2.

152 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 2-3.

153 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 3-4.

154 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 4-5.

Merrival that she was afraid of Mr. Lindquist.[155] Mr. Lindquist managed to place his DPAs on the Pierce County Bar Association Judicial Qualifications Committee to help DPA's Lineberry, McCann and his other judicial candidates receive undeserved favorable ratings.[156] DPA Dawn Farina appointed inexperienced DPA Tim Lewis as Co-Chair of the TPCBA judicial qualifications committee.[157] Highly qualified and more experienced candidates such as Mary Robnett and Karl Williams were underrated when compared to Lindquist's slate.[158] Mr. Lindquist directed DPAs to gather large quantities of blank, signed proxy votes to insure that the PCPAA voted to endorse and donate PCPAA funds to assist DPA Lineberry's campaign.[159] The PCPAA made a political donation of $15,000.00 to the Lineberry campaign.[160] Mr. Lindquist directs deputies to report back to him regarding what takes place during union meetings.[161] On May 1, 2015, two deputies were intimidated, yelled at and treated with hostility and disrespect at a PCPAA meeting where allies of Mr. Lindquist obtained the union's decision to sign an amicus brief in the *Nissen* case.[162] These deputies opposed the amici.[163] Resolution of the *Nissen* case could require disclosure of Lindquist to turn over cell phone information.[164] Some DPAs suspect this disclosure may demonstrate that Mr. Lindquist has used county resources during the workday to promote his book sales and conduct political activities unrelated to the official duties of the office of the prosecuting attorney.[165] Mr. Lindquist spends time on his literary career at work.[166] On one occasion, Mr. Lindquist suggested that DPA Merrival attend one of his book signing events and make a donation by purchasing an item related to Mr. Lindquist's own

---

155 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 5-7.

156 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 6-8.

157 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 8-10.

158 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 10-11.

159 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 12-15.

160 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 15-16.

161 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 15-16.

162 Ex. 4, pg. 9.

163 Ex. 4, pg. 9.

164 Merrival Declaration, pg. 4, ll. 16-17.

165 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 17-20.

166 Ex. 4, pg. 9; Merrival Declaration, pg. 4, l. 20.

campaign fund.[167] Mr. Lindquist uses his position to influence voting, including the wide dissemination of his personal "Voting Guide for Judicial Races."[168] Mr. Lindquist's lieutenants sent emails from their official email accounts, during office hours, in which DPAs were directed to vote in the TPCBA elections, and were told for whom it was suggested that they vote.[169] Mr. Lindquist ordered his lieutenants to collect ballots from the lawyers in the office.[170] One criminal unit advertised on their whiteboard a checklist of who had voted.[171]

Mr. Lindquist monitors the non-work activities of employees for anything that might be critical of him.[172] He contended to DPA Merrival that his wife posted comments on her Facebook page that were critical of Mr. Lindquist.[173] Mr. Lindquist admonished Michelle Walker, Justice Services/Victim Advocate Supervisor, for "liking" a photograph of a sunset posted on Facebook by former Chief Criminal DPA Mary Robnett, whom Mr. Lindquist dislikes and has placed on his Enemies List, which he calls the "Confederacy of Dunces."[174] Ms. Farina admonished DPA Penner after his fiancee posted an online comment in support of DPA Merrival's character after Merrival filed a whistleblower complaint against Mr. Lindquist.[175]

Under Mr. Lindquist's tenure, leadership assignments are going to less experienced staff members, who do not question Mark Lindquist's wishes and decisions.[176] People Mr. Lindquist does not like are not considered "good colleagues," when they do not serve Mr. Lindquist's political goals or vindictive ends.[177] The "bad" colleagues are given disfavored assignments.[178]

---

167 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 21-23.

168 Ex. 4, pg. 9; Merrival Declaration, pg. 4, ll. 22-24.

169 Ex. 4, pg. 9;Ex. 5, pg. 2.

170 Ex. 4, pg. 9.

171 Ex. 4, pg. 9.

172 Ex. 5, pg. 8; Merrival Declaration, pg. 5, ll. 3-4.

173 Ex. 4, pg. 5; Merrival Declaration, pg. 5, ll. 4-5.

174 Ex. 5, pg. 9.

175 Ibid.

176 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 4-5.

177 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 5-7.

Leadership roles are given to those considered to be "good colleagues"[179]; even after having their cases reversed by the Court of Appeals or Washington Supreme Court because of prosecutorial misconduct by them.[180] The "good colleagues" are retained in leadership roles and not held to the same standards as DPA's who express concerns about Mr. Lindquist's directives and perform their duties in an honorable, professional manner.[181] DPA [redacted] was observed copying movies on county equipment in violation of federal felony copyright laws.[182] DPA [redacted] misrepresented the truth to Judge Jasprica.[183] Upon information and belief, DPA [redacted] has a familial connection with Governor Jay Inslee, who is a personal friend of Mr. Lindquist.[184] Mr. Lindquist embroils his office in politics to a degree that interferes with the independence and impartiality of the office and the objectivity of the organizations he infiltrates.[185] His assignments often have little to do with merit or ability.[186]

Mr. Lindquist's retaliation and intimidation against employees is wrongful conduct that affects, interrupts, or interferes with the performance of official duty and constitutes the performance of his duty in an improper manner. The retaliation and intimidation of his employees constitutes the commission of unlawful acts under Title VII, the Washington State Law Against Discrimination ("WLAD"), codified in Ch. 49,60 RCW (*cf*: RCW 49.60.180), and PCC 3.16.030. His conduct amounts to the neglect or knowing failure to perform faithfully a duty imposed by law. It is the conduct of one who believes himself to ***be*** the law, not one sworn to ***uphold*** the law.

E. Mr. Lindquist has ordered that his employees evade the Public Records Act.

Mr. Lindquist has directed employees to avoid using email, especially for sensitive subjects, and has admonished employees who fail to follow the directive.[187] Mr. Lindquist has scheduled

---

178 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 7-8.

179 Ex. 4, pg. 12; Merrival Declaration, pg. 5, l. 8.

180 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 8-10.

181 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 10-12.

182 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 12-13.

183 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 13-14.

184 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 16-17.

185 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 17-19.

186 Ex. 4, pg. 12; Merrival Declaration, pg. 5, ll. 19.

meetings on his calendar with no statement of purpose for the meeting to avoid disclosing meeting agendas through potential public records requests.[188]

In early 2015, Mr. Lindquist made a phone call from his private cell phone to the private cell phone of DPA Penner to discuss a work-related matter: the Washington Supreme Court's reversal of the conviction in *State v. Darcus Allen*.[189] Mr. Lindquist told DPA Penner to read a newspaper article about it and call him back.[190] DPA Penner called back Mr. Lindquist from Penner's work phone and Mr. Lindquist admonished him for doing so because Mr. Lindquist's private cell number would appear in Mr. Penner's work phone call logs, and would be subject to disclosure under the Public Records Act, Ch. 42.56 RCW.[191] Mr. Lindquist ordered Mr. Penner to call him back with using Mr. Penner's private cell phone.[192] The next day, Mr. Lindquist admonished DPA Penner for not being a team player.[193]

His lieutenants have, at Mr. Lindquist's direction, orally instructed those present in meetings to refrain from documenting the content of meeting discussions, and have discouraged documentation of any of his questionable directives.[194] At Mr. Lindquist's direction, they orally ordered that investigation reports completed by Detectives Ames, Nissen and three others were to be forwarded to Mr. Lindquist's lieutenants for extraordinary review prior to allowing a DPA to make a decision about initiating criminal charges for that case.[195] Of greater concern, Mr. Lindquist orally ordered that DPAs were not to write down the names of *Brady* officers.[196] He ordered that there must be no written *Brady* list; even though he ordered that certain officers, selected by him based on no known objective criteria, were to be fingered as *Brady* officers.[197]

---

187 Ex. 5, pg. 5.

188 Ex. 5, pg. 5.

189 Ex. 5, pg. 5.

190 Ex. 5, pg. 5.

191 Ex. 5, pg. 5.

192 Ex. 5, pg. 5.

193 Ex. 5, pg. 5.

194 Ex. 4, pg. 6.

195 Ex. 4, pg. 6.

196 Ex. 4, pg. 6.

DPA Merrival had identified a case in which video had shown that a police officer had lied.[198] His supervisor, Maureen Goodman, ordered him not to document the *Brady* issue with regard to that officer in emails.[199] Mr. Lindquist orally ordered that any notes that a deputy would need to take on Detective Nissen's cases must be pen and ink on paper in case the notes "have to be lost."[200]

Mr. Lindquist permits text communications relating to the conduct of the office on private cell phones only and the texts may not be retained.[201] Mr. Lindquist has dedicated significant public resources to protecting his own work related texts, including lobbying the PCPAA to sign on to an Amicus brief his own deputies drafted, which advances his personal interest in keeping his cell phone and text records from disclosure.[202]

Mr. Lindquist has engaged in dirty tricks, including the creation of phony records to mislead public records requests.[203] Mr. Lindquist circulated throughout the office an e-mail he had written, in which he stated that prosecutors may need to file affidavits of prejudice against Pierce County Judge Stephanie Arend.[204] In retaliation for what he perceived to be slights by the judge against the DPAs, he stated that Judge Arend had offended families of the Lakewood police officers slain by Maurice Clemmons, by her handling of the cases involving rendering criminal assistance to Clemmons (Latanya Clemmons, Letrecia Nelson, Eddie Davis, and Douglas Davis).[205] Mr. Lindquist anticipated releasing the email in a public records request because it would hurt Judge Arend's political campaign.[206]

---

197 Ex. 4, pg. 6.

198 Ex. 4, pg. 6.

199 Ex. 4, pg. 6.

200 Ex. 4, pg. 7.

201 Ex. 4, pg. 7; Merrival Declaration, pg.5, ll. 20-21.

202 Ex. 4, pg. 7; Merrival Declaration, pg. 5, ll. 21-24, pg. 6, ll. 1-2.

203 Ex. 4, pg. 7; Merrival Declaration, pg. 6, ll. 3-4.

204 Ex. 4, pg. 7; Merrival Declaration, pg. 6, ll. 4-6.

205 Ex. 4, pg. 7; Merrival Declaration, pg. 6, ll. 6-10.

206 Ex. 4, pg. 7; Merrival Declaration, pg. 6, ll. 10-11.

The Public Records Act, Ch. 42.56 RCW was adopted because, in the strongest terms: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. *The people insist on remaining informed so that they may maintain control over the instruments that they have created*." *(Emphasis added).* RCW 42.56.030.

Mr. Lindquist's conduct demonstrates, as words could not, that he has resisted that the people "do not yield their sovereignty" to him. He has rejected that the people "do not give their public servants the right to decide what is good for the people to know." He has acted to prevent the people from "remaining informed so that they may maintain control over the instruments that they have created." Mr. Lindquist has engaged in wrongful conduct that affects, interrupts, or interferes with the performance of official duty and constitutes the performance of his duty in an improper manner by attempting to scuttle the Public Records Act and to use it to practice Dirty Tricks on elected officials who he has targeted for retribution. He should be removed from office.

F. Mr. Lindquist has badly mismanaged his office, causing many criminal cases to be dismissed because of prosecutorial misconduct.

Since January, 2013, 14 cases statewide have been overturned because of prosecutors' actions during trial.[207] Of those, six cases — almost 43 percent — were handled by the Pierce County Prosecuting Attorney's Office. In three of those, the errors were committed by veteran attorneys who remain in leadership roles in his administration.[208]

On January 15, 2015, the Washington Supreme Court unanimously reversed, on the basis of prejudicial prosecutorial misconduct, the conviction of Darcus Allen as an accomplice to the killing of four Lakewood Police Officers for being the getaway driver for Maurice Clemens, the killer. *State v. Allen*, 182 Wash.2d 364 (2015).

On January 22, 2015, the Washington Supreme Court unanimously reversed, on the basis of prejudicial prosecutorial misconduct, the conviction of Odies Walker for first degree murder. In a 9-0 decision (with six Justices joining in the majority opinion and the other three Justices authoring or joining in concurring opinions), the Supreme Court reviewed the closing remarks of the prosecutor, Chief of Staff Farina, who utilized a PowerPoint presentation made up of approximately 250 slides. Over 100 slides had the heading: "DEFENDANT WALKER GUILTY OF PREMEDITATED MURDER." There was a series of slides suggesting Walker was guilty

---

207 http://www.thenewstribune.com/2015/04/19/3745428_misconduct-pierce-county-prosecutors.html?rh=1.

208 Ibid.

because he used the stolen money for video games and lobster. One slide asserted: “Defendant Walker is GUILTY as an ACCOMPLICE to the murder because he SPLURGED ON FRIVOLOUS THINGS.” The next slides explained that those splurges included “[two] safes, a WII [sic] and several games at the Federal Way Walmart,” as well as “$200.00 for dinner at the Red Lobster.” The next slide was a photo of Walker and his family happily eating that dinner. Several other slides include photographs that were admitted exhibits, but altered with captions, headings, and superimposed text. For example, one slide was a photograph of money seized by police with the heading “MONEY IS MORE IMPORTANT THAN HUMAN LIFE.” It was not alleged that Walker, or anyone else, actually said those words. Another particularly problematic example of admitted exhibits altered with inflammatory text comes near the end of the presentation. First, a slide depicts an in-life photograph of the victim with a superimposed heading reading “DEFENDANT’S GREED AND CALLOUS DISREGARD FOR HUMAN LIFE” and text detailing the money stolen and its distribution amongst the participants. That slide is juxtaposed with the one immediately following it, the same photograph of Walker and his family eating dinner at the Red Lobster used earlier, but this time with a caption “ ‘THIS IS HOW YOU MURDER AND ROB NIGGERS NEXT TIME IT WILL BE MORE MONEY.’ ” Next came Walker’s booking photograph, altered with the caption, “ ‘WE ARE GOING TO BEAT THIS,’ ” contrasted with the final image, an in-life photograph of the victim.

The Supreme Court held:

> We have no difficulty holding the prosecutor’s conduct in this case was improper. Closing argument provides an opportunity to draw the jury’s attention to the evidence presented, but it does not give a prosecutor the right to present altered versions of admitted evidence to support the State’s theory of the case, to present derogatory depictions of the defendant, or to express personal opinions on the defendant’s guilt. *Glasmann*, 175 Wash.2d at 706–07, 712, 286 P.3d 673. Furthermore, RPC 3.4(e) expressly prohibits a lawyer from vouching for any witness’s credibility or stating a personal opinion “on the guilt or innocence of an accused.” The prosecution committed serious misconduct here in the portions of its PowerPoint presentation discussed above—it included multiple exhibits that were altered with inflammatory captions and superimposed text; it suggested to the jury that Walker should be convicted because he is a callous and greedy person who spent the robbery proceeds on video games and lobster; it plainly juxtaposed photographs of the victim with photographs of Walker and his family, some altered with racially inflammatory text; and it repeatedly and emphatically expressed a personal opinion on Walker’s guilt.

Walker, 182 Wash.2d 463 at 478.

Other notable cases that the Supreme Court or Court of Appeals reversed because of prejudicial misconduct by Mr. Lindquist’s prosecutors:

In re Glasmann, 175 Wash.2d 696 (2012): The prosecutor committed flagrant and ill-intentioned misconduct by using PowerPoint slides with improperly modified exhibits, made repeated assertions of the defendant's guilt, and stated that jurors could acquit the defendant of first degree kidnapping, first-degree obstruction, second-degree assault, and attempted second-degree robbery only if they believed him.

State v. Herbin, 174 Wn. App. 1078 (2013): The prosecutor committed misconduct by using certain PowerPoint slides during closing that were highly prejudicial, inflammatory, and amounted to the prosecutor's comment on the evidence. Conviction was reversed of one count of first degree burglary, three counts of first degree kidnapping, and four counts of first degree robbery.

State v. Hecht, 179 Wn. App 497 (2014): The prosecutor committed misconduct by showing PowerPoint slides that created a substantial likelihood of a verdict based upon passion and prejudice. Conviction of a former Pierce County Superior Court Judge for felony harassment and patronizing a prostitute was reversed.

State v. Lindsay, 180 Wn.2d 423 (2014): The Supreme Court unanimously held that the prosecutor committed misconduct when he improperly impugned defense counsel, quantified the standard of proof, trivialized the state's burden of proof, misstated the burden of proof, expressed his personal opinion on defendant's guilt and made inaudible comments to the jury. Convictions were reversed for first-degree burglary, first-degree robbery, and other crimes arising out of their entry into victim's home, removing items from home, and beating victim.

Greg Link, an attorney with the Washington Appellate Project, a nonprofit group that provides legal services to indigent clients throughout Washington and has written appeals for Pierce County defendants, stated: "It's my feeling that it is a systemic problem in that office. I work with prosecutors around the state, and from what I've seen Pierce County stands out in that regard. They also stand out for their willingness to try to defend it on appeal. Many prosecutors will admit that misconduct took place but will argue it wasn't prejudicial. Pierce County fights the misconduct ruling itself."[209]

Pierce County spent more than $385,000 to prosecute and defend Dorcus Allen, cop killer Maurice Clemmons' alleged getaway driver, only to see the case overturned because of deputy prosecutors' mistakes at trial.[210]

---

209 Ibid.

210 Ibid.

Despite the disturbing pattern of reversals of convictions, Mr. Lindquist has established no meaningful training about the cases that resulted in findings of prosecutorial misconduct generally, or about the improper use of PowerPoint presentations, which led to many of those findings of misconduct.[211] Instead, he minimized the reversals.[212]

Mr. Lindquist is the Pierce County Prosecutor's office. He is statutorily responsible for the actions of his deputy prosecuting attorneys. RCW 36.27.040. There has been a pattern and practice of prosecutions of dangerous felons for nothing more than misconduct by his deputy prosecutors during the course of the trials – in particular during closing argument. Since 2013, Mr. Lindquist's deputy prosecutors have been responsible for nearly 43 percent of all criminal convictions that were overturned for prosecutorial misconduct in the entire state of Washington. There are 39 counties in the state. It is improbable that this grossly large percentage of botched cases is the result of a statistical aberration. He has adopted no policies to correct the gross violations of defendants' rights that precipitated the reversal of those convictions. Mr. Lindquist is ultimately responsible. RCW 36.27.020; PCC 2.06.030(C)(2). The botching of these prosecutions is wrongful conduct that affects, interrupts, or interferes with the performance of Mr. Lindquist's official duty. It amounts to neglect or knowing failure by Mr. Lindquist to perform faithfully a duty imposed on him by law. His misfeasance and malfeasance and violation of his oath of office to "perform the duties of the office of Prosecuting Attorney, as such duties are prescribed by law" require his removal from office.

G. Mr. Lindquist has assembled an Enemies List of local defense lawyers and directed his prosecutors to violate the constitutional rights of their clients to fair and equal justice.

On or about May 1, 2014, over 30 local attorneys, including a host of veteran defense lawyers, a respected law professor and at least one former Pierce County chief deputy prosecutor, filed affidavits in pending litigation (*Ames v. Pierce County*) in which they accused Mr. Lindquist of withholding evidence, defamation of Detective Ames, and/or urging the trial court not to sanction Detective Ames or his attorney.[213] Mr. Lindquist dubbed these attorneys the "Confederacy of Dunces," a reference to the quote by Jonathan Swift: "When a true genius appears, you can know him by this sign: that all the dunces are in a confederacy against him."[214]

---

211 Merrival Declaration, pg. 6, ll. 12-16.

212 Ex. 4, pp. 4-5.

213 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5; Merrival Declaration, pg. 6, ll. 17-21; http://www.thenewstribune.com/2014/06/22/3255657_bitter-fight-over-child-porn-evidence.html?rh=1.

214 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5; Merrival Declaration, pg. 6, ll. 21-25.

When the declarations were filed, Mr. Lindquist's lieutenants disseminated a list of the declarants to the prosecutors in the office.[215] They instructed the deputy prosecutors to discriminate against these declarants and treat them and their clients poorly, including not to make reasonable offers in plea negotiations.[216] Mr. Lindquist expressly directed his leadership to instruct deputy prosecutors not to give good deals to attorney Gary Clower, whom Lindquist believed was the leader of the Confederacy of Dunces, based on his role as defense lawyer for Lynn Dalsing in her first criminal case.[217] Those deputy prosecutors who chose not to act improperly by following the directive, or who questioned the directive, have been and continue to be admonished.[218] Mr. Lindquist instructed DPA Penner to direct trial team negotiator DPAs not to give good deals to defendants represented by anyone in his Confederacy of Dunces.[219] When DPA Penner declined to follow this unethical directive that violates the constitutional rights of people who have retained these lawyers to defend them (most of the attorneys are appointed by the Department of Assigned Counsel for indigent defendants – which is worse), Mr. Lindquist instructed Felony Division Chief John Sheeran to deliver the directive, which he did.[220] DPAs were also told not to be seen being friendly to these attorneys, lest their careers be adversely affected.[221] Mr. Lindquist then accused DPA Penner of not having passion for the office. When DPA Penner replied he had a passion for justice, Lindquist responded: "Justice is a platitude."[222]

Mr. Lindquist has created an Enemies List. Any lawyer who has dared to support Detective Ames against him is, *a fortiori*, part of the Confederacy of Dunces. The Confederates are the enemy. They need to pay. The defendants they represent need to pay. His order to deputy prosecutors not to make offers to clients of the Confederates in retaliation for their accusations that Mr. Lindquist had withheld evidence and defamed Detective Ames violates the constitutional rights of the persons his office has charged with crimes. They are treated unequally compared to other defendants who, unlike those represented by the Confederates, are not on Mr. Lindquist's Enemies List. It has been difficult to identify historical analogies that do not come from foreign nations with judicial systems alien to our own.

215 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5; Merrival Declaration, pg. 6, l. 25, pg. 7, l. 1.

216 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5; Merrival Declaration, pg. 7, ll. 1-3.

217 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5.

218 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5; Merrival Declaration, pg. 7, ll. 3-5.

219 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5.

220 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5.

221 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5; Merrival Declaration, pg. 7, ll. 5-6.

222 Ex. 4, pp. 4-5; Ex. 5, pp. 4-5.

Mr. Lindquist's creation of an Enemies List and his direction to his staff to violate the constitutional rights of the lawyers on it is antithetical to any notion of justice, and violation of his oath.

H. Mr. Lindquist has ordered his prosecutors to treat more harshly those defendants whose cases attract media, in order to gain favorable media publicity for his purported toughness on crime.

Mr. Lindquist keeps a list of high-profile media cases and instructs that good deals should not be given on those cases because the public will notice.[223] One such case was a defendant who had embezzled money from a school district, who was represented by Gary Clower.[224] When the case was filed, DPA Penner instructed property trial team negotiator Frank Krall to treat the case like any other case. Accordingly, after the defendant paid 75% of the restitution, down to the $5000 guideline for the office diversion program, DPA Krall agreed to dismiss the case to the diversion program.[225] Mr. Lindquist became upset because he did not want the media reporting the case had been dismissed, and further because Mr. Clower was the attorney.[226] DPAs Penner and Krall were admonished for dismissing a media case, especially one where the defendant was represented by Mr. Clower.[227]

The different treatment of criminal cases by Mr. Lindquist based on the media publicity he receives is an egregious violation of his oath and constitutes misfeasance and malfeasance. It is wrongful conduct that affects, interrupts, or interferes with the performance of Mr. Lindquist's official duty. By making decisions based not on justice, which Mr. Lindquist dismisses as merely a platitude, but on his own narcissistic desire to advance his public persona, Mr. Lindquist has performed the duties of his office in an improper manner, and has neglected or failed to perform faithfully the duty imposed on him by law.

I. Mr. Lindquist has created a racially hostile workplace.

Shortly after Mr. Lindquist attempted to bully DPA Merrival in the parking lot, he casually asked DPA Merrival, a Lakota tribal member, when passing him while walking outside the courthouse:

---

223 Ex. 5, pp. 4-5; Merrival Declaration, pg. 7, ll. 7-8.

224 Ibid; Merrival Declaration, pg. 7, ll. 8-10.

225 Ibid; Merrival Declaration, pg. 7, ll. 10-14.

226 Ibid; Merrival Declaration, pg. 7, ll. 14-16.

227 Ibid; Merrival Declaration, pg. 7, ll. 16-17.

"Are you going to the casino?"[228] On another occasion, when Mr. Lindquist and Mr. Merrival were dining together at the Emerald Queen casino, Mr. Lindquist remarked that he thought that payments to tribal members should probably be ended because they just use the money to buy guns.[229] Mr. Lindquist gave an office speech, which he referred to as the state of the union, in which he referred to the need for "tribal loyalty" in the office.[230] As noted in Charge D, *infra*, Mr. Lindquist retaliated against DPA Diane Clarkson following her testimony before the Pierce County Council against his successful effort to remove the Minority Bar Association from the District Court selection committee. Mr. Lindquist assigns to DPA James Curtis, an African-American, a caseload to prosecute composed predominantly of African-American defendants.[231] As noted in Charge F, *infra*, Mr. Lindquist's Chief of Staff, Dawn Farina, used the "N" word gratuitously in her PowerPoint presentation before the jury in the *Walker* case, which the Supreme Court reversed because of prosecutorial misconduct. Mr. Lindquist's office does not have any person of color or of ethnic minority status in his administration. Minorities are not well represented among DPAs and the office does not reflect the diversity of the community.[232]

Mr. Lindquist has created a racially hostile workplace in violation of Title VII, the Washington State Law Against Discrimination ("WLAD"), codified in Ch. 49,60 RCW (*cf*: RCW 49.60.180), and PCC 3.16.030. His conduct amounts to misfeasance, malfeasance, and violation of his oath of office.

J. Mr. Lindquist has engaged in a conflict of interest in litigation in which both Pierce County and he are parties, including directing the county to take the legal position that it does not have to disclose his text messages and cell phone records, using taxpayer funds to hire private attorneys whom he controls and directs to uphold his personal interests, ordering his deputy prosecutors to use taxpayer-funded time and resources to prepare and file amicus briefs for unions and other groups in pursuit of his personal interests.

Mr. Lindquist has engaged in a direct conflict of interest in litigation with Pierce County involving his assertion of "personal interests" in that case under the Public Records Act., Ch. 42.56 RCW the "PRA"): *Nissen v. Pierce County*, Thurston Co. Superior Court Cause No. 11-2-02312-2; 183 Wash. App. 581, 333 P.3d 577 (Div. 2, 2014), *review granted*, 182 Wash.2d 1008

---

228 Ex. 4, pg. 11; Merrival Declaration, pg. 7, ll. 18-20.

229 Ex. 4, pg. 11; Merrival Declaration, pg. 7, ll. 20-22.

230 Ex. 4, pg. 11; Merrival Declaration, pg. 7, ll. 22-24.

231 Ex. 4, pg. 11; Merrival Declaration, pg. 8, ll. 2-4.

232 Ex. 4, pg. 11; Merrival Declaration, pg. 8, ll. 4-8.

(2015).[233] Detective Nissen requested work related texts from Mr. Lindquist's personal smartphone.[234] The records are sought in connection with a separate whistleblower action against Mr. Lindquist.[235] Mr. Lindquist apparently destroyed the texts and has since refused to produce the work related texts that Verizon, his carrier, preserved.[236] Det. Nissen's request for a very limited number of texts resulted in two public records cases. Nissen I was just heard in the Supreme Court. Nissen II is pending in Division II, awaiting the outcome of Nissen I. In total the two cases concern no more than one week of work related texts.[237]

The *Nissen I* case was filed on November 7, 2011.[238] The county appeared and defended vigourously despite its historical practice, and policy that defers the defense of such litigation to an intervenor who is asserting a personal reason for withholding records because there is no express or stand-alone privacy exemption.[239] On or about November 23, 2011, Mr. Lindquist had private counsel appear on his behalf and moved to intervene in his individual capacity "to protect his personal interests."[240] This same attorney has since received work from Pierce County at the request of Mark Lindquist, earning several hundreds of thousands of dollars, and the county has paid Mr. Estes in the *Nissen* matters despite Mr. Estes being personal counsel.[241] Whether Mr. Lindquist has ever also paid Mr. Estes for his personal representation is not known, but Mr. Lindquist has not disclosed any gifting of those services to the Public Disclosure Commission.[242] Mr. Estes has not been retained nor has he provided advocacy for Det. Nissen when, after her suit, Mr. Lindquist had a DPA request through a former DPA her personal phone records for a

---

233 Ex. 7, Whistleblower Complaint filed by the Washington Coalition for Open Government, pg. 1.

234 Ibid, pg. 2.

235 Ibid.

236 Ex. 8, Clerk's Papers in Nissen I, CP 61-72.

237 Ibid, CP 65, 68.

238 Ex. 7, pg. 2, Ex. A.

239 PCC 2.04.040 (A), (D), and (E).

240 Ex. 7, pg. 2, Ex. B, pg. 3, ll. 10-11.

241 Ex. 9.

242 http://www.pdc.wa.gov/MvcQuerySystem/Candidate/sw_candidates

year's period of time.[243] Det. Nissen was ordered to produce them to the county's contracted public records officer who still retains them.[244] Mr. Lindquist moved for a temporary restraining order in which he asked the court to issue an "injunction prohibiting Defendant Pierce County from disclosing, and Plaintiff from receiving, his personal records."[245] The complaint was dismissed before the trial court could entertain the motion.[246] The court held that the records that Detective Nissen requested were not public records under the PRA and dismissed the case. *Nissen*, 183 Wash. App. 581, 588. Nissen appealed and the Court of Appeals reversed. *Nissen*, 183 Wash. App. 581, 585. Pierce County and Lindquist both sought review before the Washington Supreme Court, which granted discretionary review.

DPA Dan Hamilton represented Pierce County in the *Nissen* case until the point the trial court dismissed the case on the pleadings. Later, Mr. Lindquist hired outside counsel Mike Patterson and Phil Talmadge for the appeals in the Court of Appeals and before the Supreme Court.[247] Mr. Lindquist also caused his personal lawyer, Mr. Stewart Estes, to represent him personally before the Supreme Court.[248] As discussed in Charge C, *infra*, Mr. Lindquist caused DPAs Ausserer and Peters to file an amicus brief on behalf of the PCPAA and other unions, using the resources of Mr. Lindquist's office and on county time.[249]

According to Mr. Lindquist, and the position taken by Pierce County at his direction, if the text messages in question had been made on his government-issued phone rather than his personal phone, they would be public records and have to be turned over. The only reason he believes the record in question does not have to be revealed is that he used his personal phone to create it, even though it was regarding government business.[250] As Chief Justice Madsen stated to Mr. Talmadge during the oral argument: "What happens to the right of the public to know what their officials are up to if we in our modern technology age do everything on our private devices? It's

---

243 Ex. 8, pp. 856, 861, 863-865.

244 Ibid.

245 Ex. 7, pg. 2, Ex. B, pg. 3, ll. 11-13.

246 Ibid, pg. 2.

247 Ibid, pg. 2.

248 Ibid, pg. 2.

249 Ibid, pg. 2.

250 http://www.thenewstribune.com/2015/06/16/3843144_pierce-county-prosecutors-public.html?rh=1

driving a truck through the PRA (Public Records Act.)"[251] Justice Gonzalez engaged Mr. Talmadge in the following colloquy: "If government officials wish to avoid exposure to the Public Records Act, they may simply use their private devices for all of their communications? And the communications would be unavailable to the public?" Talmadge gave a long answer. "Is that a yes?" Justice Steven Gonzales asked. "That's a yes," Talmadge said.[252] Mr. Lindquist and his proxy in the litigation, Pierce County, assert that the anti-PRA legal position that they have taken is in the best interest of the county. This position has been taken without Pierce County Council approval and without the same deference and advocacy given to Det. Nissen whose personal records are in the county's possession.[253]

There is an obvious conflict of interest in the *Nissen* litigation between Mr. Lindquist and Pierce County. The records requested in the Nissen litigation relate to alleged retaliatory misconduct by Mr. Lindquist, and he had a separate lawyer represent him as an intervenor in the litigation "to protect his personal interests." The office of the Pierce County Prosecuting Attorney is charged with enforcing the PRA and may be held liable for attorney fees and penalties for any violation of the PRA. RCW 42.56.550(4). In contrast, Mr. Lindquist has no personal liability under the PRA, and he appears to be opposing Detective Nissen's PRA request for personal and political reasons.[254] Mr. Lindquist's conflict of interest has already cost the taxpayers of Pierce County $282,490 in attorney fees thus far – before the case was argued to the Supreme Court.[255] If the Supreme Court affirms the Court of Appeals and remands the case back to the trial court, Mr. Talmadge indicated to the Supreme Court that there were numerous constitutional and other bases for objections that Mr. Lindquist would likely raise to avoid asking Verizon to turn over his text records.[256] Thus, the financial liability to the taxpayers because of Mr. Lindquist's conflict of interest has no end in sight.

Mr. Lindquist's creation of a conflict of interest, his use of his office to further his personal interests, and his cavalier exposure of the taxpayers for both the legal expenses of doing so, and

---

251 http://tvw.org/index.php?option=com_tvwplayer&eventID=2015060007, at 18:55-19:17

252 Ibid, 3:07-3:38.

253 Ex. 8, pp. 856, 861, 863-865.

254 Ex. 7, pg. 4.

255 http://www.thenewstribune.com/2015/06/16/3843144_pierce-county-prosecutors-public.html?rh=1

256 http://tvw.org/index.php?option=com_tvwplayer&eventID=2015060007, 17:15 – 18:55/

the possible attorney fees of Detective Nissen and penalties if he loses, amounts to misfeasance and malfeasance in office. It is wrongful conduct that affects, interrupts, or interferes with the performance of his official duty, and the performance of a duty in an improper manner. His refusal to purge the conflict, and instead to constitutes the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law. His intentional withholding of the texts that relate to the conduct of his office amounts to felony criminal misconduct.

K. Mr. Lindquist has unlawfully interfered with the right of the employees in the office to organize without interference.

Most of the Pierce County Deputy Prosecuting Attorneys (DPAs) are represented by their union, the Pierce County Prosecuting Attorneys' Association (PCPAA).[257] Mr. Lindquist and management DPAs, including Division Chiefs, are excluded from the PCPAA.[258] In 2014, the PCPAA held an election for its officers.[259] DPA James Schacht filed to run for First Vice President.[260] The person in that position is responsible for the grievance process for the DPAs.[261] Initially, no one else filed to run against Mr. Schacht.[262] Mr. Lindquist has expressed that DPA Schacht has been unduly critical of him.[263]

DPA [redacted] filed to run against Mr. Schacht for union vice president.[264] Ms. [redacted] is a close personal friend of Mr. Lindquist, and the two are often seen together socializing.[265] Mr. Lindquist ordered management DPAs, who are not union members, to tell union-member DPAs

---

257 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 12-13. PC Ordinance 2013-17 approved the collective bargaining agreement between the PCPAA and the county for the prosecutor's office.

258 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 13-14.

259 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 14-16.

260 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 16-17.

261 Ex. 4, pg. 11; Merrival Declaration, pg. 8, l. 17.

262 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 17-18.

263 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 18-19.

264 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 20-21.

265 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 21-22.

that they should vote for Ms. [redacted] over Mr. Schacht in the PCPAA election.[266] Several management DPAs followed Mr. Lindquist's order, including Misdemeanor Division Chief Timothy Lewis.[267] Mr. Lewis encouraged the office's newest DPAs to vote for Ms. [redacted] over Mr. Schacht.[268] One DPA, Annie Gutierrez, felt the pressure by Mr. Lewis was inappropriate and reported the interference to PCPAA officer DPA Lisa Wagner.[269] Due to the impropriety of that conduct, the PCPAA held an emergency meeting to address the issue.[270] DPA Lewis later admitted he attempted to influence junior DPAs but Mr. Lindquist refused to take any action, claiming the issue to be a union issue.[271] However, it is precisely because it is a union issue that Lindquist attempted to influence the vote.[272]

Mr. Lindquist solicited the PCPAA to make a campaign contribution for Jeanette Lineberry, the candidate he supported for judge.[273] Mr. Lindquist monitors all union meetings and gathers information from members to influence the union's collective decision making.[274] A member of Mr. Lindquist's management team contacted DPA Leech to tell him that Mr. Lindquist knew that he had spoken against Mr. Lindquist's wishes in a union meeting.[275] Lindquist similarly monitors voting in the Sheriff's Guild.[276]

Mr. Lindquist's interference with the DPAs in the free exercise of their right to organize and designate representatives of their choosing for the purpose of collective bargaining is unlawful under RCW 41.56.040. It constitutes misfeasance and malfeasance in office.

---

266 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, ll. 22-23.

267 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 8, l. 24, pg. 9, l.1.

268 Ex. 4, pg. 11; Ex. 5, pg. 3; Merrival Declaration, pg. 9, ll. 1-2.

269 Ex. 5, pg. 3; Merrival Declaration, pg. 9, ll. 2-3.

270 Ex. 4, pg. 11; Merrival Declaration, pg. 9, ll. 3-4.

271 Ex. 4, pg. 11; Merrival Declaration, pg. 9, ll. 4-6.

272 Ex. 4, pg. 11; Merrival Declaration, pg. 9, ll. 6-7.

273 Ex. 4, pg. 11; Merrival Declaration, pg. 9, ll. 8-9.

274 Ex. 4, pg. 11; Merrival Declaration, pg. 9, ll. 9-11.

275 Ex. 4, pg. 11; Merrival Declaration, pg. 9, ll. 11-13.

276 Ex. 4, pg. 11; Merrival Declaration, pg. 9, ll. 13.

L. Mr. Lindquist has abused the power of his office to damage the rights of civil servants and citizens, exposing the county to ever escalating financial losses and ongoing disruption of civil and criminal justice in Pierce County.

Mr. Lindquist has repeatedly exposed the county to potential liability for his overzealousness and spitefulness. In addition to the vindictive prosecution of Lynn Dalsing, there are at least two additional unresolved examples for which the county continues to consume valuable resources and risks exposure for outside attorneys' fees and costs; and damages.

Detective Ames

Detective Mike Ames was a long-term civil servant with protected property and liberty interests in his position as a computer forensic detective with the Pierce County Sheriff's Department.[277] He was the Department's exclusive forensic examiner for whom the County invested significant resources on training and developing his expertise. [278] Beginning in January of 2012, Det. Ames became the subject of the prosecutor's animus when he successfully made a overtime wage claim, and then later was the forensic examiner in the *Kopachuck Middle School*, *Nissen*, and *Dalsing* cases. In each, his professional opinions conflicted with the outcomes desired and expressed by Mark Lindquist and his office.[279]

In late July 2012, Ms. Mell called Detective Ames, as she needed to turn over for forensic examination a thumb drive containing evidence of child abuse. The case involved a student at Kopachuck Middle School in Gig Harbor.[280] In February 2012, the eighth-grade boy had been dragged around a classroom and taunted by other students while a teacher watched and occasionally participated. Students filmed the incident on their phones. The Peninsula School District had provided the videos to the parents of the victim on a thumb drive.[281]

---

277 Ex, 10, Declaration of Det. Mike Ames in Opposition to the Prosecutor's Special Motion to Strike in Ames v. Pierce County, Cause. No. 13-2-13551-1, pg 34, ll. 1-23, Ex. 38.

278 Ibid, Ex. 38.

279 http://www.thenewstribune.com/2014/06/22/3255657_bitter-fight-over-child-porn-evidence.html?rh=1.

280 Ibid.

281 Ibid.

The parents brought the thumb drive to Ms. Mell, whom they retained to represent them. Recognizing the potential criminal implications, as affirmed by former prosecutor John Ladenburg, the family referred the matter to law enforcement. [282] While trading phone calls with the lead detective, Ms. Mell contacted Det. Ames for assistance with getting the forensic evidence into the hands of law enforcement with the least interference with the chain of evidence.[283] Det. Ames spoke to the parents about their possession of the thumb drive and took into evidence the irrefutable video evidence of the shocking incident.[284] He wrote a summary and forwarded the report to another detective for investigation.[285]

On Aug. 29, 2012, The News Tribune published a story about the Kopachuck incident, including video excerpts. The story went viral. CNN, the Today show, and international news outlets ran the story. Emails flooded the sheriff's office, demanding action. Mr. Lindquist issued a statement saying the prosecutor's office was looking into the case.[286]

A discussion took place within the Pierce County Sheriff's Department about the fact that Ms. Mell had previously represented Detective Ames in a wage claim against the county.[287] A question arose as to whether there was a conflict of interest.[288] Undersheriff Bisson replied quickly via email: "I'm not seeing the conflict if this is a county case. Mike won't be the investigator, he just obtains the materials off the electronic items and it would be assigned to a detective."[289]

Notwithstanding there was no conflict, upon information and belief Mr. Lindquist pressured the Pierce County Sheriff's Department to search Detective Ames' email account for correspondence with Ms. Mell.[290] The email search found no correspondence between Detective Ames and Ms. Mell.[291] Capt. Bomkamp shared the results with his commander, Rick Adamson. [292] Adamson promptly sent an email to Mr. Lindquist, informing him of the results and, interestingly, pleading

---

282 Ibid.

283 Ibid.

284 Ibid.

285 Ibid.

286 Ibid.

287 Ibid.

288 Ibid.

289 Ibid.

290 Ibid.

with him: “Please don’t forward this.”[293] Chief Adamson admitted Mr. Lindquist was involved in the request for the search of Det. Ames’ e-mail.[294]

In November 2012 - within weeks after Detective Ames forwarded the Exculpatory Emails to DPA Richmond - Mr. Lindquist reached a decision that no criminal charges would be filed with regard to the Kopachuck incident.[295] Curiously, their report discounted the videos that captured the incident simply because they had been forwarded by Ms. Mell, on the curious implicit basis that because she represented the parents, the admissibility or the weight of the evidence that the videos captured of the incident was compromised. [296] Mr. Lindquist published a press release stating the videos were turned over by Ms. Mell, which was a factor in his decision not to charge a crime: “To complicate matters, the civil attorney reported the matter to a PCSD (Pierce County Sheriff’s Department) detective who had been represented by that same civil attorney on an unrelated matter.”[297]

On Feb. 14, 2014, Detective Ames retired from the sheriff’s office after 26 years of service. In his letter to Sheriff Paul Pastor, he wrote: “The working conditions for me have become intolerably hostile to my good name, reputation and credibility.” [298] The county lost a valuable deputy. He had achieved all of the appropriate credentialing and was well respected among his peers. He was committed to criminal justice in Pierce County.

Mr. Lindquist has exposed the county potentially large claims to include reimbursement of the fees he incurred in the *Dalsing* matter exposing the exculpatory evidence over the objections of the prosecutor’s office. The prosecutor’s office refused to immediately assign him independent counsel and proceeded to attempt to deflect liability away from the prosecutor’s office by criticizing Detective Ames.

---

291 Ibid.

292 Ibid.

293 Ibid.

294 Ibid.

295 Ibid.

296 Ibid.

297 Ibid; Ex. 11, News Release dated November 6, 2012 entitled: “No Charges In Kopachuck Middle School Case.”

298 http://www.thenewstribune.com/2014/06/22/3255657_bitter-fight-over-child-porn-evidence.html?rh=1.

Detective Nissen

Mr. Lindquist's battle against Detective Nissen is personal.[299] Detective Nissen did not support his election, and when she criticized him to staff he demanded an apology from her. [300] He banned her from his office on false allegations that she sent an anonymous threatening letter to DPA Robnett when in reality she sent an e-mail with her name attached to the press criticizing Mark Lindquist as corrupt.[301] The county settled her claims related to the ban from the prosecutor's office, but immediately upon settlement, Mr. Lindquist engaged in further retaliatory conduct in direct conflict with the settlement agreement when he, using county resources, insisted The News Tribune remove a sentence from its coverage of the settlement that affirmed the Sheriff's Department never identified a suspect responsible for the threat to DPA Robnett.[302] Detective Nissen continues to be shunned from the prosecutor's office and the deputies handle her cases distinctly from all others, including refusing to meet with her or otherwise collaborate in the prosecution of cases she investigates.[303]

The value of Detective Nissen's retaliation claims continue to escalate with the continued interference with her job as a Pierce County Sheriff's deputy.[304] This liability derives solely from the hostile animus generated by Mark Lindquist who disfavors her because she has not supported him and because she has attempted to hold him accountable.[305]

Pierce County continues to increase its reserves to pay for the three outside law firms battling on Mark Lindquist's behalf to hide a week's worth of work related text messages requested through public disclosure by Detective Nissen.[306] Also at risk is a penalty award against Pierce County

---

299 http://www.thenewstribune.com/2015/06/11/3835591_high-court-wrestles-with-lindquists.html?rh=1; Ex. 12.

300 http://www.thenewstribune.com/2015/06/11/3835591_high-court-wrestles-with-lindquists.html?rh=1.

301 Ibid.

302 Ibid.

303 Ibid.

304 Ibid.

305 Ibid.

306 Ibid.

for the failure to produce the requested public records.[307] The ACLU recommended in its amici briefing that the penalty be imposed against Pierce County.[308] This penalty may be up to $100.00 per day for each day Detective Nissen was denied access to those public records.[309] At $100.00 per day the maximum penalty would now exceed $150,000.00 in each of the two cases.[310] In addition, the statute allows for the recovery of attorney's fees and costs, which likely exceed the penalty.[311] The county has paid $253,449 to outside attorneys working on the *Nissen* cases according to billing records from the county's risk management division.[312] Thus, the county risks losing three quarters of a million dollars for assisting Mr. Lindquist in hiding a week's worth of work related text messages.[313]

Mr. Lindquist's vindictive pursuit of two fine Pierce County detectives for daring to politically oppose him or to challenge his office's withholding of evidence and obstruction of justice constitutes misfeasance and malfeasance in office and violation of his oath. He should be recalled from office for this conduct, the pursuit of which has already cost the people of Pierce County hundreds of thousands of dollars, with the potential for much more to come.

V. Conclusion.

This Statement of the Charges in support of the Recall of Pierce County Prosecuting Attorney Mark Lindquist is based on the facts set forth in the exhibits, footnotes, internet citations, and declarations filed in connection herewith, cited herein and incorporated by reference.

Mark Lindquist has committed malfeasance and misfeasance in office and violated his oath of office in numerous respects, as detailed in this Statement of the Charges, over a long period of time. He is entrusted to advance justice as Pierce County's top law enforcement official. To him, justice is a platitude. He has treated the office, and by extension has treated the people of

---

307 RCW 42.56.550(4).

308http://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm?fa=coabriefs.briefsByHearingDate&courtId=A08&year=2015#a20150611.

309 RCW 42.56.550(4).

310 RCW 42.56.550(4).

311 Ibid.

312 http://www.thenewstribune.com/2015/06/11/3835591_high-court-wrestles-with-lindquists.html?rh=1.

313 Ibid.

Pierce County, as a means whereby he can advance his personal interests at the expense of justice. He should be recall from office.

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, and that I have sufficient knowledge of the alleged facts upon which the stated grounds for recall are based.

Dated this 24th day of June, 2015.

/s/Cheryl Iseberg
Cheryl Iseberg
President, Recall Mark Lindquist
1039 Monterey Lane
Fircrest, WA 98466

JPH:tbs
enclosures