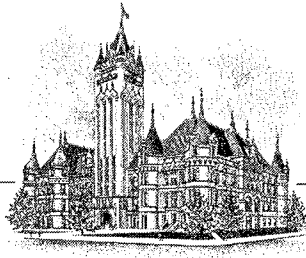


S P O K A N E



C O U N T Y

LAWRENCE H.  
HASKELL  
PROSECUTING ATTORNEY

OFFICE OF PROSECUTING ATTORNEY

County-City Public Safety Building  
1100 W. Mallon Avenue  
Spokane, WA 99260-0270  
(509) 477-3662 FAX: 477-3409

August 2, 2023

TO: Washington State Court of Appeals- Division III  
500 North Cedar Street  
Spokane, Washington 99201

CC:

Spokane County Sheriff's Office  
1100 W. Mallon Ave  
Spokane, WA 99260

Spokane City Police Department  
1100 W. Mallon Ave  
Spokane, WA 99260

Airway Heights Police Department  
1307 S Ziegler St.  
Airway Heights, WA 99001

Liberty Lake Police Department  
23127 E. Mission Ave.  
Liberty Lake, WA 99019

Cheney Police Department  
215 G Street  
Cheney, WA. 99004

Washington State Patrol  
Criminal Investigation Division  
6403 W Rowand Rd.  
Spokane, WA 99224

Washington Association of Sheriff's &  
Police Chiefs  
3060 Willamette Drive NE  
Lacey WA 98516

Washington Association of Prosecuting  
Attorneys  
206 10<sup>th</sup> Avenue SE Olympia  
Washington 98501

Washington State Dept. of Corrections  
1717 W Broadway  
Spokane, WA 99201

Spokane County Public Defender's Office  
1033 W. Gardner  
Spokane, WA 99260

Counsel for Defense  
1116 W Broadway Ave  
Spokane, WA 99260

Office of Public Defense  
Evergreen Plaza, 711 Capitol Way S  
Olympia, WA 98501

**COPY**

Honorable Judges of Division III:

On behalf of the Spokane County Prosecuting Attorney's Office and the past, present, and future crime victims of Spokane County, I write this letter to respectfully request that the Honorable George Fearing recuse from all criminal cases involving the Spokane County Prosecutor's Office, the Spokane County Sheriff's Office, and any victim of assault, especially sexual assault. This request is made in light of his comments in the unpublished decision of *State v. Vaile*, No. 37943-4-III (May 11, 2023). I believe Judge Fearing's recusal is required by the Code of Judicial Conduct ("CJC") due to the appearance of impropriety displayed through his personal held views of my office, the individual Deputy Prosecuting Attorney, the individual law enforcement officers, the law enforcement community as a whole, the 911 caller in this case, and crime victims at large. I acknowledge and embrace the fact that racism has no part in our society or system of justice, and it is incumbent on all involved in the criminal justice system to strive for justice and equality for all. Baseless accusations of racism and bigotry have no place in an impartial judiciary and only serve to further promote hate and greatly erode public trust at the expense of honorable men and women in our community.

CJC Rule 1.2 requires judges to "act at all times in a manner that promotes public confidence in the independence, integrity, and **impartiality** of the judiciary [*emphasis added*]" and to "avoid impropriety and the appearance of impropriety." The comments to this rule state that "[a]ctual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." Based on his many comments in this matter, a reasonable mind would inescapably arrive at the conclusion that Judge Fearing's violated the CJC and compromised the independence, integrity, and impartiality that is required of individual judges and the appellate court as a whole. Concern for Judge Fearing's lack of impartiality is a fact raised by his fellow judges on this Court who in return are repeatedly berated by Judge Fearing in both the original dissenting opinion and in the denial of publication for their adherence to their ethical and judicial duty to consider the facts presented and issues raised by the parties except for the specific circumstances outlined under RAP 12.1(b). The majority specifically addressed the rule and determined that the case could and should be decided on the basis of the issues briefed by the parties.

The issues raised by Judge Fearing were not litigated at trial or raised on appeal by Mr. Vaile - a fact noted by the majority judges. The failure to raise those issues below deprived the State of an opportunity to respond to Judge Fearing's later accusations with the actual facts of the case and deprived the trial court of the opportunity to make findings of fact on those issues. In the absence of facts to support the chosen narrative, Judge Fearing inferred his own, imputing malicious motives to the victim, deputies, prosecutors, and other judges involved in this case. Rather than considering the relevant rules of appellate procedure, the applicable CJC sections, and the facts of this case, Judge Fearing raised these issues on his own initiative relying on sources outside the record to impute racist motivations to every participant in this litigation.

Judge Fearing's comments capitalize on the pain, suffering, and sorrow caused by racism in this country and furthers a false narrative that my office, the Spokane County Sheriff's Office, the

Spokane judiciary, and the community as a whole are perpetuating a “*white power structure*” that is crushing African Americans in Spokane. These purposeful comments at a minimum implicate CJC 1.2, 2.2, 2.3, and 2.4 and their attendant comments on application. Judge Fearing’s statements are not and cannot be categorized as good faith errors of fact or law. Instead they appear to be an intentional and purposeful deviation from the facts of this case to further a personal agenda. Under the auspices of racial justice, the judge has manifested a clear bias and prejudice against the 911 caller in this case, the Spokane County Prosecuting Attorney’s Office, the Spokane County Sheriff’s Office, any white crime victim (especially a female), his fellow judicial officers, and the Spokane community as a whole.

Separate and apart from the open hostility to the county prosecutor’s office and law enforcement, the comments at issue place a devastating burden on crime victims to show actual injuries or act a certain way before calling police. This is contrary to the law and encourages misconduct by those who would commit sexual assault. This type of mindset dangerously enshrines the notion that a sexual assault victim, especially a female, should be taking additional steps to their own detriment before involving police. This is a mindset that cannot and should not exist in our society.

Consequently, the Spokane County Prosecuting Attorney’s Office shares the concerns about Judge Fearing’s lack of impartiality identified by the two majority judges in both the lead opinion and in the order denying publication. The following excerpts from Judge Fearing’s dissents are but a few examples of many that lead reasonable people to believe that Judge Fearing cannot adhere to the CJC, and ultimately cannot fulfill his judicial obligation of avoiding the appearance of impropriety when faced with a criminal matter. Especially one brought before him by any prosecutor or law enforcement in Spokane County. The below examples support this request for recusal and demonstrate that Judge Fearing cannot be impartial with respect to the particular facts of a case when law enforcement or prosecutors are involved.

### **Disrespect for the Crime Victim & Lack of Impartiality**

#### Statement from Dissent:

- *“Instead of reporting Darnai Vaile to the restaurant managers and asking that he be removed from Peking Palace, Patricia Murray phoned law enforcement. Some white women view police as private security guards and protectors ready to perform their bidding. We pejoratively label these women with the moniker ‘Karen.’ Videos abound of Karens asking for assistance because of the innocuous presence of a Black man ... When calling 911, Murray likened the kiss to a gang rape. History informs of numerous instances of white women claiming rape when innocently touched by a Black man. Brutal consequences to the male follow.” Slip. op. at 20-21(emphasis added).*

Judge Fearing’s opinion hinges on his assertion that the victim and police responded with racial animus against, specifically, a black man. A clarification is not only necessary but required here given the editorial license taken by the judge. Had this issue been raised below, the prosecution would have had the opportunity to inform the court that the race of the defendant was never an issue in the initial callout, nor was he reported to the 911 dispatcher as a black man.

Rather the victim reported to 911 that the man who kissed her appeared to be Hawaiian, not black. The 911 dispatcher reported to police in the computer aided dispatch notes that the victim identified Mr. Vaile as an Asian male, not a black male. Mr. Vaile's acquaintance, John Ryken, also testified he believed Mr. Vaile to be Asian. RP 549. Despite the conflicting reports of Mr. Vaile's race it is clear that the victim did not perceive Mr. Vaile as a black man nor did law enforcement respond to an assault perpetrated by a "black man".

Further, Ms. Murray did not liken *the kiss* to a gang rape. Instead, at the end of her 911 call, she referenced a gang rape due to the conduct of *other bar patrons*, friends of Mr. Vaile, who she said "freaked out" on her. RP 371; Ex. P-18. And contrary to Judge Fearing's implication, Ms. Murray was not innocently touched when she was kissed against her will by an unknown man. She was assaulted. Period. All victims, even imperfect victims or victims who do not respond in the way a judge might have in the same situation, deserve to be respected by the courts and deserve a police response. They should be free from harassment, insult, and pejorative nicknames. Ms. Murray was not required to show injury or any physical marks before she called 911.

The above statement from the dissent associates the crime victim in this case with a pejorative term because of her race and sex and without any factual development in the trial court for her motivation in reporting the assault to police. Race was not a factor in the assault on Ms. Murray or in the police response to it. The unwanted kiss was not innocent conduct; it was a fourth-degree assault at a minimum. While the Prosecutor recognizes and does not condone the fact that the victim exaggerated the extent of the assault, Ms. Murray *was* assaulted when she was kissed by an unknown man. (RP 576). As noted in our motion in opposition to publish, her 911 call did not describe Mr. Vaile as black man.

CJC Rule 2.3 prohibits a judge from manifesting bias or prejudice by words or conduct as well as harassment in their comments and decision making. The judicial canons explain that examples of bias or prejudice include but are not limited to epithets, slurs, demeaning nicknames, and negative stereotyping. Yet, rather than promoting an appearance of fairness and impartiality, Judge Fearing openly insulted thousands of women in our community and across our state. He did not hesitate to publicly and pejoratively describe the 911 caller in this case as a "Karen" because of her race and sex, or to tell the community that he is part of a "*We*" that stereotypes women. While singling out white women specifically, he condemns all women who could be victims of assault and abuse. It is troubling that the judge's comments, appear to suggest that women, and especially white women, should not report minor or non-injurious assaults to the police, because to do so where the alleged assailant is of a different race is racist. This in spite of the fact that the silencing of women of any color from reporting assault has also been the subject of a social justice movement named #MeToo. Judge Fearing's minimization of an alleged but uncharged assault as merely an "inopportune kiss" or an "innocent touch," and his use of demeaning nicknames and negative stereotyping of the 911 caller inevitably lead to the reasonable conclusion that his ability to act impartially is subject to question, not only by his colleagues and the prosecutor's office, but by crime victims as well.

It bears repeating that Mr. Vaile was not the sole person charged with a crime from the events at the Peking Palace at issue in this case. Noticeably absent from Judge Fearing's comments is that the same jury that considered Mr. Vaile's matter also considered the charges against the 911

caller's sister, a white woman, for assaulting the Spokane County Deputy who arrested Mr. Vaile. This individual, a white woman, was charged on the same information as Mr. Vaile and was convicted by the same jury that acquitted him of third-degree assault. The dissenting judge's opportunistic sorting of facts is not accidental.

### **Mischaracterization of the Record**

The following statements from the dissent mischaracterize the legal standard for assault in the State of Washington and demonstrate vehement disdain for the officers involved in responding to a chaotic late-night scene outside a bar.

#### **Statements from Dissent:**

- *“Contrary to the testimony of the Spokane County sheriff deputies about Darnai Vaile’s conduct, no bystander confirmed the sheriff deputies’ description of Vaile as walking aggressively or appearing angry. All witnesses averred that Vaile walked as if surrendering to the deputies.” Slip. Op at 21.*
- *“The Spokane County sheriff deputies treated Darnai Vaile as if he committed a major crime such as rape, not an unwanted kiss. Police use force against African-American men for even minor offenses or when no offense transpired.” Slip. Op at 22.*
- *“Sheriff deputies deemed Vaile to fit the stereotype of an African-American suspect. He was not a human being with which to reason, but a grave threat to fear and subdue, if not conquer.” Slip. Op at 22.*
- *“The arresting law enforcement officers claimed Darnai Vaile formed a clenched fist and waived this clenched hand from his side to above his head. Yet, no bystander corroborated the claim of a clenched fist. Bystanders testified that Vaile held his hands high as if surrendering. Regardless, the clenched fist serves as a symbol of African-American rebelliousness and assertion of power against white control. Testimony from officers of the clenched fist posed an opportunity for the State to insert the stereotype of African-American Vaile mutinying against government authority.” Slip. Op. at 22.*
- *“The Spokane County sheriff deputies’ attack on Darnai Vaile is too often standard police procedure. In fact, one knowledgeable of encounters between African-American males and law enforcement officers would express surprise that Vaile survived the encounter without serious injury. Many Black Americans are not so lucky.” Slip. Op. at 23.*
- *“Racism also infected the charges filed by the State of Washington against Darnai Vaile. The State prosecuted Vaile for assaulting two law enforcement officers, despite no officer testifying that Vaile threatened force or struck an officer. No officer testified to any injury suffered from the action of Vaile. The State introduced pictures of Darnai Vaile’s injuries, but no photographs of alleged officer injuries.” Slip. Op. at 24.*

- *“The State rested its two charges of assault on the theory that the sheriff deputies reasonably feared for their safety because of the presence of a knife, the excitability of Darnai Vaile, and the lack of his cooperation. Nevertheless, Vaile possessed the right to carry a knife. In order to protect himself, Vaile volunteered the presence of the knife in his pocket and, despite restraints, threw the knife to the ground. The deputies’ professed fear of Vaile because of his excited nature and his purported refusal to cooperate caters to the stereotype of the angry Black man. Not only was Vaile an angry black man, but he was a large, angry Black man.” Slip. Op. at 24.*
- *“Police use the charge of resisting arrest as a form of racial oppression rather than to keep communities safe.” Slip. Op. at 25.*
- *“A man of color resists arrests if he so much as twitches when being detained by law enforcement... Darnai Vaile’s encounter with sheriff deputies followed this pattern.” Slip. Op. at 26-27.*

Judge Fearing’s disdain for law enforcement is readily obvious through his writing. Specific to this case, his beliefs about the officers in this case appear to stem from an extremely partial interpretation of testimony, inappropriate reweighing of credibility determinations made by the jury, and a readiness to impute repugnant beliefs and motivations to the officers when there were none. This bias results in a clearly inaccurate description of the actual facts of the case and of the elements necessary to prove assault. Especially concerning is Judge Fearing’s groundless assertion that law enforcement viewed Mr. Vaile as subhuman. Absent evidence and without hesitation he declared that these law enforcement officers viewed a black individual as subhuman. This statement demonstrates his own personal beliefs and displays a strong negative bias against law enforcement.

The transcript demonstrated that Judge Fearing substituted his own personal beliefs and perceptions for that of the trial testimony. Bystanders *did* corroborate the officers’ testimony. While two witnesses testified that Mr. Vaile appeared to surrender to the deputies, another witness, Kody Mechem, a friend of Mr. Vaile’s, testified that he grabbed Mr. Vaile by the shirt and tried to stop Mr. Vaile before he got to the deputies that night because Mr. Vaile was walking “pretty fast toward the cops” and he is such a “big dude” he can be “alarming” if you don’t know him. Mr. Vaile pushed his friend aside and continued toward the deputies. Mr. Vaile is 6’ 10” and weighs over 350 pounds. Another witness, John Ryken, who knew Mr. Vaile and played pool with him in the past, testified that Mr. Vaile appeared “*agitated about something*” and “*he was walking at a very fast pace*” toward the deputies. These descriptions and characterizations of Mr. Vaile were made by his own friends and acquaintances, not law enforcement.

The facts at trial clearly do not square with the rendition of events described by Judge Fearing in his dissent. He effectively substituted his own credibility determinations for that of the jury and thereby infringed on a role reserved exclusively for the jury. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999); *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959). Allowing one’s personal beliefs to infiltrate a case to the extent that the actual facts are overwritten and lost violates the appellate court’s crucial role of considering only

the facts presented at trial and refraining from inferring facts or deriving them from public clamor, political forays, and outside influences.

Moreover to suggest law enforcement and prosecutors charged Mr. Vaile without cause not only ignores the testimony and the facts of the case, but wrongly suggests that a physical strike or injury is necessary to the charge of assault. It is well established that an assault does not require injury. *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009) (one common law definition of assault is “an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it”); 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 35.50 (5th ed. 2021) (“[An assault is [also] an act[, with unlawful force,] done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. [*It is not necessary that bodily injury be inflicted.*]]”) (emphasis added). As the record demonstrated, the officers reasonably feared that they would be stabbed when Mr. Vaile pulled out his knife despite numerous orders not to. Mr. Vaile’s behavior fell squarely within the definition of assault in the State of Washington and injury was not required.

Judge Fearing’s statements appear to ignore the facts of this particular case, and instead rest on his personally held beliefs and perceptions about this office as well as law enforcement. Despite evidence to the contrary, he eagerly and ardently imputes malicious intent and evil motivations to all involved. This includes the various judicial officers (at least six) that heard the matter from the moment of filing to the final trial judge. This imputation of malicious intent is not consistent with the requirement of impartiality, neutrality, and appearance of fairness.

### **Mischaracterization of the Deputy Prosecutor’s Argument**

#### Statements from Dissent:

- “*Sheriff Deputy Griffin Criswell never testified to any violence by Darnai Vaile directed at the officers, let alone that he viewed Vaile tossing deputies like rag dolls. The closing argument’s picture of Vaile simultaneously throwing two law enforcement officers as if they were Raggedy Ann dolls catered to a stereotype of African-American men as violent brutes bred to be large and strong. The prosecuting attorney’s egregious fabrication removes any doubt that racism infected this prosecution and ends any reluctance to pen this jeremiad.*” ... “*The undisputed facts also establish that Darnai Vaile never verbally or physically threatened the officers, never swung at an officer, and told the officers he wanted to cooperate. Vaile did not pull his knife on officers, and officers did not know of the knife until Vaile volunteered its presence. Vaile legally possessed the knife. The trial transcript undeniably confirms the State’s employment of racist dog whistles.*” *Slip. Op.* at 32, 44-45.
- “*The record verified that the State utilized the tired trope of a strong, brutish man and, in this instance, capable of simultaneously throwing two officers as if they were Raggedy Ann dolls.* (RP 678).” *Order Denying* at 6.

Despite the repeated assertion that the deputy prosecutor purposely and maliciously stereotyped the defendant for maximum effect, that is simply not what occurred. Deputy Vicini testified that he held Mr. Vaile's left wrist with both hands while Deputy Hilton held Mr. Vaile's right wrist. RP 310-11. Though both deputies directed Mr. Vaile not to reach for his knife, Mr. Vaile ignored the commands and pulled the deputies from side to side. RP 246-48, 311. Deputy Hilton testified that when he attempted to handcuff Mr. Vaile to keep him from pulling out his knife, Mr. Vaile continued resisting, "*pulling [the deputies] all around,*" and "*[a]t one point, he actually lifted Deputy Vicini off the ground and was able to pull the knife out of his pocket with him attached to his wrist.*" RP 247-48. Deputy Criswell testified he saw Deputies Vicini and Hilton in an obvious struggle to detain Mr. Vaile. RP 400.

Further, Deputies Hilton and Vicini testified Mr. Vaile repeatedly refused to follow their commands. Despite orders not to reach for his knife, Mr. Vaile pulled the knife from his pocket with the four-inch blade open. Mr. Vaile's actions, combined with the knowledge that alcohol was likely involved, made the officers legitimately afraid that Mr. Vaile was going to stab them.

Consistent with the testimony, the deputy prosecutor in closing stated: "*You heard from Deputy Criswell. He also responded to the scene. When he got to the scene, he testified he didn't see any of the preliminary activities, but he saw the deputies, one on each arm, trying to control Mr. Vaile. He saw the knife that was lying on the ground. He testified that it looked to him as if Mr. Vaile was tossing the deputies around like they were rag dolls.*" Though the deputy prosecutor inadvertently misidentified the last statement as testimony from Deputy Criswell instead of Deputy Hilton, it remains true that the prosecutor was arguing about facts actually attested to at trial and he was describing the testimony to the jury.

Noticeably absent from Judge Fearing's comments is the end result of Mr. Vaile's jury conviction for the gross misdemeanor offense of resisting arrest. Despite the caricature of the trial attorney as a rabid racist who fabricated many aspects of the trial, what the record actually reflects is a reasoned prosecutor who amended the charges from violent offenses to non-violent offenses prior to trial, and who also removed the deadly weapon enhancements previously associated with the case. Further, upon conviction, the trial attorney asked the court to sentence Mr. Vaile to community service.

Despite the end result (acquittal by a jury for the felony offenses and a sentence request of community service), Judge Fearing opines about future misconduct by my office and again impugns his fellow judges, the trial court, and the original jury that considered the case. He has already predicted the method, tactics, and result of any retrial:

- "*... as a result of the court's refusal to recognize and condemn the racism, the State, on retrial, will repeat advocacy of uneven application of the evidence rules and employ racist tropes. The court majority's ruling allows the State to convict Darnai Vaile on retrial while again denying Vaile a fair trial...*" Slip. Op. at 32, 44-45.

By these statements, Judge Fearing encourages the public to find that the trial judge, law enforcement, prosecutors, sworn jury, and fellow appellate judges are acting in concert to violate Mr. Vaile's rights. Judge Fearing continues to demonstrate his bias against the prosecution in his

most recent comments on this matter, claiming repeatedly that the record displays an “*overwhelming pattern of bigotry in the prosecution*” and that “*the bigotry shouted from the transcript pages.*” *Order Denying Motions to Publish Court’s Opinion*, at 4-6, 9. As shown above, however, the record clearly contradicts this position. To state that Mr. Vaile’s race, and not his conduct, motivated the deputies’ response and the State’s case, requires a gross departure from the actual facts of this case. In terms of any retrial, there will be none. My office requested dismissal shortly after the opinion was issued because proceeding on gross misdemeanor charges after Mr. Vaile was acquitted of the felony assaults does not serve a deterrent purpose and is not a prudent use of State and judicial resources. Judge Fearing denied my office’s request to file a dismissal. My request for filing of the dismissal in this case and Judge Fearing’s denial are part of the public record in this case and can be reviewed.

An appellate court that decides, as Judge Fearing has done here, its own facts and on its own initiative issues outside the record necessarily raises concerns of partiality and lack of neutrality. As a result, Judge Fearing must have the opportunity to recuse himself and in fact should be required to do so based on his clear bias against the Spokane County Prosecutor’s Office, law enforcement, and crime victims in our community.

### **Conclusion**

The above examples are only a few excerpts of many from the dissenting opinions that are problematic and demonstrate an appearance of impropriety or worse. Context is important, but appellate judges remain tasked with deciding the issues raised and litigated by the parties, on the facts asserted by the parties and decided in the trial court. Judge Fearing admits his partiality in reviewing criminal cases and does not hesitate to insert facts outside of the record when deciding a case. Despite his assertion that the appellate court can read the court record and transcript as well as the superior court, the opinion(s) show that his own personal beliefs about this office and law enforcement overcame any facts to the contrary. *See Order Denying Motions to Publish Court’s Opinion*, dissent at 7.

The majority judges did not follow this course and instead correctly noted in the order denying the motions to publish that the issue of race was not raised at the trial level or at the appellate level by Mr. Vaile’s counsel. The trial court is typically in a better position to review certain issues and it cannot do so unless the issues are raised. Rather than referring to the record here, the takeaway from Judge Fearing is that the trial court judge along with everyone else was complicit in racism. This contention is unsupported by the record and displays the judge’s own personal views of others within our community and county government.

This Court has acknowledged the importance of the appearance of fairness in judicial proceedings:

Like the protections of due process, Washington’s appearance of fairness doctrine seeks to prevent the problem of a biased or potentially interested judge ... Under this doctrine, evidence of a judge’s actual bias is not required; it is enough to present evidence of a judge’s actual *or potential bias*.... “The CJC recognizes that where a

trial judge's decisions are tainted by even *a mere suspicion* of partiality, the effect on the public's confidence in our judicial system can be debilitating."

...

A judicial proceeding satisfies the appearance of fairness doctrine only if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.... "The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes that 'a reasonable person knows and understands all the relevant facts.'"

*Tatham v. Rogers*, 170 Wn. App. 76, 95–96, 283 P.3d 583 (2012) (internal citations omitted) (emphasis added).

As previously indicated, Judge Fearing has taken advantage of the pain, suffering, and anguish caused by racism to further an obviously personal agenda against my office and law enforcement. Partiality and preconceived notions have no role in judicial considerations, yet it is glaringly obvious in this matter that preconceived notions overcame the facts of this case. Moreover, crime victims are now on notice that they can and will be attacked, belittled, and embarrassed publicly by Judge Fearing for their involvement in the law enforcement and/or prosecution process. This conduct does not promote confidence in the judiciary or our criminal justice system and instead encourages disdain for crime victims, law enforcement and the bench as a whole. The deputies, the trial attorneys, and the judges that handled this case, as well as the host of community members involved here deserved and continue to deserve better from Judge Fearing. His chosen interpretation of this case demonstrate that the Spokane County Prosecuting Attorney's Office and law enforcement involved in its cases, cannot expect an impartial hearing before Judge Fearing.

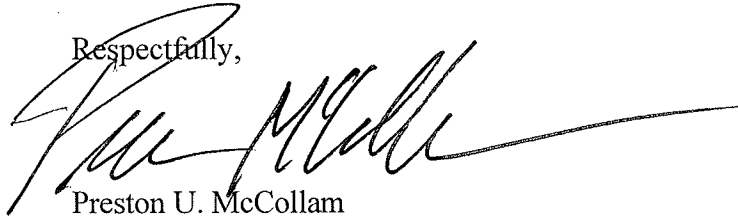
My office is and remains committed to equal application of the law in all cases. Everyone within Spokane county is a unique individual and are entitled to equal justice as guaranteed by our laws. This is true for the accused in any case as well as the crime victim in any case. The role and duty of a prosecutor is not to seek convictions, but to seek justice within the bounds of the law. This includes ensuring that a defendant's right to a fair trial is not violated. This is a duty that I and my office take very seriously. We are and remain committed to the principle that all crime victims should have access to justice regardless of the crime victim's or suspect's race. In bringing forth cases to a judicial body whether it be in a trial or appellate capacity our law requires the bench to avoid any appearance of unfairness and or partiality in fact. Unfortunately, that does not and cannot exist with Judge Fearing in light of his personal opinions about both my office and law enforcement. The views expressed in Judge Fearing's opinions proudly inject outside and historical racial considerations into areas where the specific facts do not support his narrative.

Partiality and prejudice should not and cannot exist in our justice system for any party. To describe my office and law enforcement as the villain of society does everyone a disservice. With a few keystrokes Judge Fearing paints my entire office of over 50 criminal attorneys and the law enforcement community with the brush of racism and prejudice. This dishonors the hard work the men and women of these agencies do every day and ignores the unique and diverse perspectives

each of these individuals bring with them. The bias and prejudice shown by Judge Fearing demonstrate that he does not care about the actual conduct or actions of an officer, deputy prosecutor, or judge in any particular case and instead is prepared to impute malice based simply on who the parties are or what color they are. Consequently, recusal is not only recommended, but required, in criminal cases.

For the aforementioned reasons, I request the Honorable Judge Fearing recuse himself from all Spokane County criminal cases as he cannot be fair and impartial.

Respectfully,

A handwritten signature in black ink, appearing to read 'Preston U. McCollam', with a long horizontal flourish extending to the right.

Preston U. McCollam  
Chief Criminal Deputy  
Spokane County Prosecuting Attorney's Office  
WSBA# 46549