but the lawyer may argue, on his or her analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) Communicate ex parte with such a person except as permitted by law; or

(c) Engage in conduct intended to disrupt a tribunal.

RULE 3.6 TRIAL PUBLICITY

A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

[Amended effective May 8, 1987.]

GUIDELINES FOR APPLYING RPC 3.6

I. Criminal.

A. The kind of statement referred to in rule 3.6 which may potentially prejudice criminal proceedings is a statement which relates to:

(1) The character, credibility, reputation or criminal record of a suspect or defendant;

(2) The possibility of a plea of guilty to the offense or the existence or contents of a confession, admission or statement given by a suspect or defendant or that person's refusal or failure to make a statement;

(3) The performance or results of any investigative examination or test such as a polygraph examination or a laboratory test or the failure of a person to submit to an examination or test;

(4) Any opinion as to the guilt or innocence of any suspect or defendant;

(5) The credibility or anticipated testimony of a prospective witness; and

(6) Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial.

B. The public has a legitimate interest in the conduct of judicial proceedings and the administration of justice. Lawyers involved in the litigation of criminal matters may state without elaboration:

(1) The general nature of the charge or defense;

(2) The information contained in the public record; and

(3) The scheduling of any step in litigation, including a scheduled court hearing to enter a plea of guilty.

C. The public also has a right to know about threats to its safety and measures aimed at assuring its security. Toward that end a public prosecutor or other lawyer involved in the investigation of a criminal case may state:

(1) That an investigation is in progress, including the general scope of the investigation and, except when prohibited by law, the identity of the persons involved;

(2) A request for assistance in obtaining evidence and information;

(3) A warning of danger concerning the behavior of a person involved when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(4)(i) The identity, residence, occupation and family status of the accused;

(ii) Information necessary to aid in apprehension of the accused;

(iii) The fact, time and place of arrest; and

(iv) The identity of investigating and arresting officers or agencies and the length of the investigation.

II. Civil. The kind of statement referred to in rule 3.6 which may potentially prejudice civil matters triable to a jury is a statement designed to influence the jury or to detract from the impartiality of the proceedings.

RULE 3.7 LAWYER AS WITNESS

A lawyer shall not act as advocate at a trial in which the lawyer or another lawyer in the same law firm is likely to be a necessary witness except where:

(a) The testimony relates to an issue that is either uncontested or a formality;

(b) The testimony relates to the nature and value of legal services rendered in the case; or

(c) The lawyer has been called by the opposing party and the court rules that the lawyer may continue to act as an advocate; or

(d) The trial judge finds that disqualification of the lawyer would work a substantial hardship on the client and that the likelihood of the lawyer being a necessary witness was not reasonably foreseeable before trial.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.

State v. Knight, King County District Court, South Division, No. [redacted] CQ54646KC, King County District Court, West Division No. C438381, and *Knight v. State*, King County Superior Court No. 04-2-07991-8 SEA Web Page

See also www.antipeonage.0catch.com

Antipeonage Act Site Map

This is the Web Page upon which I list the internal links to the pleadings I filed in response to the NEW criminal charges of Driving While License Suspended, in spite of my previous VICTORY in the Mercer Island Case.

Motion to Dismiss Complaint, Collateral Estoppel

In spite of this, L. Stephen Rochon, judge pro tem, (also a judge of Pacific Municipal Court, Pacific being a small city between Auburn and Sumner, Washington, and practices law, mostly criminal defense) tentatively denied my motion finding that the City of Mercer Island is not in privity with the State of Washington as represented by the King County Prosecutor's Office.

Really!

So I had to file this Motion to Reconsider and Supplement to Motion to Dismiss Complaint, Collateral Estoppel

I filed almost identical motion and supplement in KCDC, West Division No. C438381.

One would think that this is a slam dunk and I should not have to go through this.

On January 9, 2004, the King County Prosecutor's Office agreed and moved to dismiss the charge in the South Division. They admitted that they could not establish their theory of the case: if the letter by certified mail was sent and received, they could somehow get around the collateral estoppel that arises from Mercer Island dropping the previous case. But they discovered that the Departments of Social and Health Services and of Licensing could not establish that. So this charge is dismissed with prejudice and I have asked them to drop the charge in the West division because now collateral estoppel is complete and airtight: Second Supplement to Motion to Dismiss in West Division No. C438381. The full and fair opportunity to present evidence is frustrated by the lack of evidence.

Even so, it is my position that Mercer Island had the full and fair opportunity to present evidence of either certified mail or personal service. Therefore, even if the DOL came up with the evidence to support this prosecutor's theory of the case, I am confident that the

Superior Court would have reversed on grounds of collateral estoppel in the event the District Court continued to not get a clue and the jury actually convicted. I had prepared further motions and a set of jury instructions, and as the case was dropped, I left the Kent courthouse with a bag of unfired ammunition. It will wait for a client who needs it. I believe that the King County District Court, in its practice of not allowing the parties to know which judge or judge pro tem is hearing a case before the hearing, for arraignment, pre-trial and readiness hearing, jury call, motion hearing, and trial, it is vulnerable to the kind of motion I prepared.

It may be presented in another case.

However, Deputy Prosecutor Kathryn Kim is a determined Captain Ahab and she must think of me as the Great White Whale. She cannot stand having me continue to swim in her ocean! On March 2, 2004, she filed a State's Response to my Motion to Dismiss in No. C438381 actually claiming that a very questionable finding by the Ninth Circuit Court of Appeals in my federal challenges to the WorkFirst Act collateral estops me from requiring proof of the notice required by RCW 74.20A.320(1)! Thus negating my previous victory in the Mercer Island case establishing that this must be proven.

With only 23 hours to prepare a reply to this insane argument and present it at the hearing on March 3, 2004, I drafted my Defendant's Reply to State's Response to Motion to Dismiss. And with some additional time, on March 4, 2004 I presented my Defendant's Supplemental Reply to State's Response to Motion to Dismiss.

At the hearing on March 11, 2004, Judge Linde denied my motion to dismiss on grounds of collateral estoppel. But she went further, as in **BEYOND THE PALE**. In spite of my plea that under the Confrontation Clause of the Sixth Amendment that the prosecution must either produce the process server to give live testimony or explain why they cannot, even that with the new United States Supreme Court decision in *Crawford v. Washington* which greatly narrowed the exceptions for unavailable witnesses, Judge Linde found that a few documents bearing the signature of the process server was sufficient to PROVE the element of service!!! This is the element that Judge Michael Trickey found needed to be proved in *Mercer Island v. Knight*. Therefore, she found that the jury only needed to decide whether a State Patrol officer is telling the truth when he testifies about pulling me over and finding that I was driving the car.

That is **CONVICTION** of a **CRIME** by **SUMMARY JUDGMENT**. The **PRECISE THING** the Sixth Amendment **PROHIBITS** and was **INTENDED TO PROHIBIT**. Read *Crawford*, and what you find is that the First Congress considered the case of *Crown v. Sir Walter Raleigh*. Raleigh was tried for treason. He and his lawyers demanded that one of his accusers be produced for trial so his defense team can examine him in front of the jury. The Crown refused and the court thereby allowed him to be convicted on such deposition testimony. In short, conviction of a crime by summary judgment. King James I commuted the death sentence to imprisonment in the Tower of London. After Raleigh returned from a failed expedition in Guyana, King James invoked the death sentence and Raleigh was

executed.

The Sixth Amendment was written with the Confrontation Clause to prevent what happened to Sir Walter Raleigh from ever happening in any American trial. It insures that every element necessary for the conviction of any crime must be proven by live testimony subject to cross examination. That Judge Linde is willing to violate this very principle, even in the face of a defendant's presentation of a copy of the new *Crawford v Washington* decision, should **OUTRAGE** all Americans concerned about our Constitutional rights.

Fortunately, it appears that under chapter 7.16 RCW, a writ of prohibition is available to prohibit a criminal trial where a court exceeds its jurisdiction by allowing trial or even finding by summary judgment, an element of the crime that was at issue in previous criminal cases where the prosecution had full and fair opportunity to present proof of such element, needed to present such proof, and declined after being required to present such proof. Once such a dismissal with prejudice (meaning that collateral estoppel and res judicata can be invoked) happens, a court lacks jurisdiction to consider the same issue of fact in a subsequent criminal case.

Therefore, I filed in King County Superior Court No. 04-2-07991-8 SEA my Application for Statutory Writ of Prohibition to restrain Judge Barbara Linde and the King County District Court from trying me for a crime where a necessary element is barred by collateral estoppel.

Then I had to work fast. I filed my Motion for Order to Show Cause Why Application for Writ of Prohibition Should Not be Granted. Not only did Judge James Doerty, the Chief Civil Judge in downtown Seattle, grant the Order, he stayed the district court proceedings. The Order is noted for hearing at 1:30 pm Tuesday May 18, 2004. Judge Doerty denied my Application and lifted the stay of the district court proceedings. He found that I "misapprehended" *Shuman v. Dept. of Licensing*, (2001) 108 Wash. App. 673, 681-682, 32 P. 2d. 1011. Because there was not a "full and fair adjudication" of the issue that the superior court found necessary to prove the charge in the prior cases, I have not proven all elements of collateral estoppel. This is exactly like saying that I misapprehend the school Pee-Chees because I read them to mean that a furlong is 660 feet.

Well, Judge Doerty was a Family Court Commissioner.

This is embarrassing. Really embarrassing! The violation date alleged in KCDC, West Division No. C438381 for the DWLS 3rd degree, RCW 46.20.342(1)(c), is August 4, 2002. The Complaint was filed was during November 2003.

More than one year.

DWLS 3rd degree is a simple misdemeanor. I made the mistake of presuming that the limitation for gross misdemeanors, 2 years, applied to all misdemeanors.

But RCW 9A.04.080(1)(j) defines the limitation for simple misdemeanors to be one year.

On that basis, we will have to move to dismiss.

And I was **SO** looking forward to appealing the issue of collateral estoppel and the Confrontation Clause issue!

I can be forgiven for believing taxpayers ought to stop blaming us noncustodial parents for our high tax rates! Our prosecutor did not have to file such foreseeably futile cases.

If the back button does not take you there, click Home to go to the Index page of this Antipeonage Act Website, click Enemies for the main Enemies page, click Letters for the Letters page, and click Allies for the Allies page. Or you can use the Antipeonage Act Site Map.