

City of Seattle



Judge Seattle Municipal Court

**Confirmation Packet
September 16, 2020**

Catherine Marie McDowall



City of Seattle

Mayor Jenny A. Durkan

September 16, 2020

The Honorable Lorena González
President, Seattle City Council
Seattle City Hall, 2nd Floor
Seattle, WA 98104

The Honorable Lisa Herbold
Chair Public Safety Committee, Seattle City Council
Seattle City Hall, 2nd Floor
Seattle, WA 98104

Dear Council President González and Chair Herbold:

I am pleased to present to the City Council the confirmation packet for Catherine McDowall, who is my appointment to fill the vacancy on the Seattle Municipal Court, Position 1. Ms. McDowall is being appointed to fill the position previously held by Judge Edward McKenna, who retired in April of this year.

Please find attached a confirmation packet that includes the following:

1. Ms. Catherine Marie McDowall notice of appointment;
2. her oath of office;
3. her application materials and questionnaire; and
4. supplemental materials Ms. Catherine McDowall offered in support of her appointment.

Ms. Catherine McDowall currently serves as Judge Pro Tempore on the Seattle Municipal Court, and has served in that role since 2013. Judge Pro tem McDowall received her undergraduate degree from Northwestern University in Evanston, Illinois, then attended the University of Virginia School of Law for her Juris Doctorate. She began her career in private practice doing civil litigation in Washington, DC before moving to Seattle where she joined the King County Prosecuting Attorney's Office as a deputy prosecutor in 1998 and was promoted to Senior deputy prosecutor. She has 22 years of courtroom trial experience working on all types of criminal cases from misdemeanors to felonies, and at all levels from filing to appeals.


Judge Pro tem McDowall is well respected by the current judiciary and she has demonstrated experience and knowledge of the law and the challenges facing the court. She understands the criminal justice reforms the court is currently implementing and she has a deep commitment to addressing the issues of systemic and institutional racism as demonstrated by her support for more diversion programs, addressing jury selection and bias, as well as the implementation of changes to probation. Further, her reputation as a judicial officer is she exhibits the highest integrity handling each case with fairness and impartiality and showing empathy and respect for all those who enter her courtroom.

Judge Pro tem McDowall received a well qualified rating from the King County Bar Association. Further, the Mayor conducted a Judicial Evaluation Committee process pursuant to ordinance 121698, which was

comprised of representatives from the Minority Bar Associations, City Attorney's Office and the Public Defender Association. The Judicial Evaluation Committee recommended Judge Pro Tem McDowall for appointment to the Seattle Municipal Court.

If you have any questions about the attached materials or need additional information, please contact Michelle S. Chen, Legal Counsel to the Mayor at 684-5452.

Sincerely,



Jenny A. Durkan
Mayor of Seattle



City of Seattle Boards & Commissions Notice of Appointment

Appointee Name: <i>Catherine Marie McDowall</i>		
Board/Commission Name: <i>Seattle Municipal Court</i>		Position Title: <i>Judge</i>
<input checked="" type="checkbox"/> Appointment OR <input type="checkbox"/> Reappointment		City Council Confirmation required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Appointing Authority: <input type="checkbox"/> City Council <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Other:		Term of Position: Confirmation to 12/31/2022 <input checked="" type="checkbox"/> <i>Serving remaining term of a vacant position</i>
Residential Neighborhood: <i>Magnolia</i>	Zip Code: <i>98199</i>	Contact Phone No.: [REDACTED]
Background: <i>Ms. Catherine McDowall is currently serving as Judge Pro Tempore at Seattle Municipal Court. She has been in a judicial officer role for the last seven years since 2013 and before that she was Senior Deputy Prosecutor in the King County Prosecuting Attorney's Office. As Pro Tem Judge, Ms. McDowall has demonstrated her skills as a judicial officer who has presided over different calendars and specialty courts: Mental Health court, Community court, and Veteran's court. She is exceptionally well qualified to join the bench given her familiarity with the court's procedures and personnel and can transition seamlessly into the role and deal with the court's high volume and backlog of cases. More importantly, Pro Tem Judge McDowall is knowledgeable about the court's current reform efforts and she is deeply committed to innovation and addressing systemic racism in the criminal justice system. She was rated Well Qualified by the King County Bar Association and Qualified by the Loren Miller Bar Association.</i>		
Authorizing Signature (original signature): <i>Jenny A. Durkan</i> Date Signed (appointed): 9/16/2020		Appointing Signatory: <i>Jenny A. Durkan</i> <i>Mayor, City of Seattle</i>



**CITY OF SEATTLE - STATE OF WASHINGTON
OATH OF OFFICE**

STATE OF WASHINGTON

COUNTY OF KING

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge of the Municipal Court of The City of Seattle according to the best of my ability."

Catherine Marie McDowall

Subscribed and sworn to before me
this _____ day of _____, 2020

(affix seal)

Monica Martinez Simmons, City Clerk



City of Seattle Judicial Evaluation Questionnaire

This questionnaire is confidential and will be used to facilitate the recommendation of candidates for the Seattle Municipal Court vacancy.

Instructions: Please answer the following questions in the space provided or on an attachment. The original questionnaire should be sent to JudicialVacancy@seattle.gov. If you have questions, please telephone the City Clerk's office at 206.684.8344.

1. **First Name:** Catherine
Middle Name: Marie
Last Name: McDowall

2. **Home Address:** [REDACTED]
City: Seattle
State: WA
Zip: 98199

3. **Business Address:** [REDACTED]
City: Seattle
State: WA
Zip: 98199

4. **Date of Birth:** [REDACTED]
Place of Birth: Willoughby, Ohio

5. **Years of admission to practice law?** 25
In Washington? 23

6. **List colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.**

Northwestern University, 1987-1991, BA Political Science, BA Slavic Studies

7. List law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

University of Virginia School of Law, 1992-1995. JD

8. Provide the following information concerning your legal experience:

A. If a practicing lawyer, the general nature of your current and past law practice and identify the firms or companies with whom you have worked:

Currently, I am practicing law exclusively as a Pro Tem Judge in Seattle Municipal Court (since October 2013), King County District Court (since April 2016), and King County Superior Court – Juvenile Division (since February 2015).

From 1998-2009, I worked as a Deputy Prosecuting Attorney (Senior Deputy Prosecuting Attorney from 2003-2009) in the Criminal Division of the King County Prosecutor's Office. I served in the District Court Unit, Juvenile Court Unit, Felony Trial Teams, Early Plea Unit and Appellate Unit. From 2003-2009 I worked exclusively in the Appellate Unit, arguing cases before Division One Court of Appeals and the Washington Supreme Court.

Prior to moving to Seattle, I worked for Sonnenschein, Nath and Rosenthal (now Dentons) as a litigation associate in the Washington, D.C. office, from 1995 through 1997.

B. If a judicial officer, the court on which you serve, the dates of service, and your prior experience practicing law, including information responsive to 8(a) above:

N/A

C. If you are neither a practicing lawyer nor judicial officer, describe with particularity the nature and extent of your legal experience.

N/A

9. List all courts and jurisdictions in which you have been admitted to practice and the date of admission. Give the same information for administrative bodies having special admission requirements.

- Virginia State Bar, 1995-1997.
- Washington, D.C. Bar, 1995-1997.
- Washington State Bar, 1997-present.

10. Are you in good standing in every bar association of which you are a member? If not, please explain.

Yes.

11. Describe five of the more significant matters that you have handled and give the citation if the cases were reported.

- City of Seattle v. Barnes, et al, No. 638607. March 2019. I presided over a pretrial motion hearing in this case that joined twelve defendants who were charged with crimes relating to protests in the downtown core in two separate incidents. The case involved six discrete legal motions on First Amendment grounds, sufficiency of the evidence (*Knapstad*), Sixth Amendment grounds (*Apprendi*), prosecutorial vindictiveness and other issues. After the hearing, I issued a written ruling on the consolidated motions. (Copy attached.)
- City of Seattle v. Bulene, Howell and Jarvinen, Nos. 598935, 598936, 598937. In one of the first cases I handled as a Pro Tem Judge, I presided over this multi-defendant jury trial, which lasted over a period of several weeks in November-December 2014. The case involved a significant amount of publicity, because two of the defendants were Seattle Fire Department employees, who were charged with assaulting a homeless man near the fireman's memorial in Occidental Park after a Sounders game.
- State v. Athan, 160 Wn.2d 354 (2007). Lead opinion written by Justice C. Johnson. This case was significant because of the novel legal issues presented, particularly with respect to the initial sample of DNA obtained from the defendant. Police used a ruse and sent the defendant a letter requesting a response. The defendant licked the envelope, thus unwittingly providing a sample of his DNA. Several amicus curiae, including the ACLU and WSBA, filed hundreds of pages of briefing. I was the sole attorney representing the State on appeal in this case.
- State v. Ahluwalia, 143 Wn.2d 527 (2001). Lead opinion written by Justice J. Smith. This case was significant because it was my first case before the Washington Supreme Court. I served as sole counsel for the State on appeal, arguing double jeopardy issues related to proceedings after an acquittal on one charge but a hung jury on the lesser charge.
- State v. Lorenzo Marr, King County Case No. 00-1-11267-6 SEA. Jury trial in October-November 2001 before Judge Helen Halpert. This trial, which I also handled as sole trial counsel for the State, involved the prosecution of this defendant for multiple counts of Possession of Stolen Property. The case generated significant publicity, due to the defendant's relationship to a murder suspect who was at large when the searches of the house were conducted. The case involved complicated issues of proof related to the value of the items seized.

12. If you have had any other experience in the legal profession that you believe enhances your qualifications for serving as a trial judge, briefly describe it here.

Between college and law school, I lived in the Washington, D.C. area and worked as a legal assistant in a large law firm. Although I supported a number of attorneys in various practice areas in the office, I was assigned primarily to support a lawyer who served as a lobbyist for a natural gas association. This assignment required me to attend and summarize a number of Congressional hearings on topics of interest to our clients. I also coordinated and prepared a briefing packet for the periodic meetings of the association members. This experience gave me an insight into our federal political processes and also into the planning and strategizing that lobbyists and politicians do to influence government institutions and agencies on behalf of special interests.

13. Describe your experience or interactions, both personally and professionally, with individuals from different racial, ethnic, religious or cultural backgrounds than your own. Please describe efforts you have made in order to promote diversity in your professional and personal activities and to assure equal access to the law for all individuals.

I was raised in a largely white, middle class suburb in Ohio. After leaving that suburb to attend college in another state, and in a very urban environment (Chicago), I became acquainted with a number of people from different racial, ethnic, religious and cultural backgrounds, as well as people from other states and countries, and I became friends with a number of people of color. Between college and law school I lived in the Washington, D.C. area, and was exposed to many different cultures. While attending law school in the southern state of Virginia, I was exposed to even more people of color, in particular, several people of color who grew up and lived in the south, and I became friends with a number of people of color during that time as well.

From 1999-2011, my husband served on the Board of Directors of The ARC of King County. The ARC advocates for and supports the civil rights of children and adults with intellectual and developmental disabilities in our region. Through his contact with this agency and our involvement with fundraising activities for the agency, I came into contact with people with developmental disabilities and learned a great deal of information about issues related to their needs, such as housing and job training. My husband continues to serve on the finance committee since leaving the Board of Directors, and we remain involved in their fundraising efforts.

Professionally, while serving as a prosecuting attorney and as a Pro Tem judge, I have been exposed to a wide variety of people from diverse backgrounds, as colleagues, witnesses, victims, and defendants. In particular, while serving as a deputy prosecutor in juvenile court, I recall discovering in excruciating detail the heartbreaking social and personal history of many respondents and victims. Much of this exposure came through reading the very detailed reports from the Juvenile Probation Counselors who were assigned to supervise juveniles who enter that system as offenders. Additionally, I had personal contact with similarly situated individuals who were victims and witnesses of

the alleged crimes, including recent immigrants and people with very different personal histories than what I have personally experienced. Those months serving King County in juvenile court were some of the most impactful experiences I had as a prosecutor, broadening my world view in ways that made me more aware of, and compassionate toward, people with life experiences so drastically different from my own. This experience also cemented my commitment to public service.

More recently, I have attended a number of training sessions and CLE programs related specifically to diversity in the legal profession and addressing social justice issues. For example, I have attended CLE presentations on the impact of microaggressions, the proposed reform of jury selection to prevent racial bias, addressing generational differences in the legal profession and the consequences of mass incarceration trends in Washington State. On a personal level, I have tried to educate myself about racial and social justice issues through reading non-fiction and fiction books, watching documentaries and through other media, such as news programs and podcasts. I strive to continually educate myself, to learn and listen to people with vastly different perspectives and personal views, and to reevaluate and examine my beliefs and opinions in light of new information that I receive.

14. Have you ever served as a judicial officer or sought appointment or election to a judicial office? If so, give the details, including the courts involved, whether elected or appointed, and the periods of service. Include service as a pro-tem judge, giving courts, approximate dates, and names, addresses and telephone numbers of various attorneys who appeared before you.

A. Pro Tem Judge, Seattle Municipal Court, October 2014 – present. The following list contains the names of some attorneys who have appeared before me in trials:

- *City of Seattle v. Jose Mercado Guzman, No. 645066, DUI, trial in September, 2019.*
 - Assistant City Attorney: Gorry Sra, [REDACTED]
 - Defense Attorney: Sara Mendes, [REDACTED]
- *City of Seattle v. Sharde Sheperd, No. 613566, Assault, trial in October, 2016.*
 - Assistant City Attorney: Phillip Chu, now with Weinstein Caggiano, PLLC, [REDACTED]
 - Defense Attorney: Sade Smith, Smith Law LLC, [REDACTED]
- *City of Seattle v. Adelyn Rostomily, No. 601551, DUI, trial in October, 2015.*
 - Assistant City Attorney: Barbara Serrano, now with Washington Attorney General's Office, [REDACTED]

- Defense Attorney: Kevin Trombold, [REDACTED]
- While serving in Seattle Municipal Court, many attorneys appear before me for very short hearings. The following lawyers have appeared before me as counsel in recent cases with substantive motions or longer criminal calendars:
 - Danielle Malcolm, [REDACTED]
 - Neil Fox, Law Office of Neil Fox, PLLC, [REDACTED]
 - Francisco Duarte, Fury Duarte, PS, [REDACTED]
 - Dan Okada, [REDACTED]

B. Pro Tem Judge, King County District Court, April 2016 – present. The following list contains the names of some attorneys who have appeared before me in trials:

- *State v. Keyse Yousef, No. 516063810, Assault, trial in November, 2017.*
 - DPA: Matthew Gross, [REDACTED]
 - Defense Attorney: Jennifer Kaplan, [REDACTED]
- *State v. Edward Cale, No. 9Z0013876, DUI, trial in February, 2020.*
 - DPAs: Armando Padron-Cruz, [REDACTED] and Steve Herschkowitz, [REDACTED]
 - Defense Attorney: David O, [REDACTED]

C. Pro Tem Judge, King County Superior Court Juvenile Division, February 2015 – present. I have not presided over any trials at juvenile court, nor have I presided over any substantive motions. The last time I served as a Pro Tem in this court was March, 2019.

15. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? If yes, give the details, including the offices involved, whether elected or appointed, and the length of your service.

No.

16. Have you ever been arrested, charged or held by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If yes, please give details. (Do not include

traffic violations for which a fine of \$150.00 or less was imposed.) If any such episode occurred, you may give your view of how it bears on your present fitness for judicial office.

No.

17. Has a client, lawyer or other party ever brought a claim or suit against you for malpractice or filed a complaint or other grievance against you with a bar association or other entity or organization charged with investigating claims of professional misconduct, including organizations charged with overseeing judicial conduct? If yes, please give particulars and the results.

No.

18. Have you ever been a party or otherwise involved in any other legal proceedings? If yes, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest.

- Case No. 20-2-03510-6 SEA, John McDowall and Catherine McDowall v. William A. Oberg, dba Oberg Build+Design and or/ dba Veritas Build + Design, Western Surety Company and Wesco Insurance Company. This is a breach of contract dispute over the construction of a garage on our home property.
- Case No. 10-2-04607-1 SEA, J.M. and C.M. v. John Does 1 to 2. This was a tort/defamation claim against an unknown person or persons who distributed false and defamatory information about my husband, we believed connected with a litigation matter he was handling as a private attorney. The identity of the perpetrators was never confirmed, and we ultimately dismissed the suit.

19. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with an appointment to the Seattle Municipal Court bench?

No.

20. Are you now or have you ever been a member of an organization or club which excludes persons from membership on the basis of race, national origin, gender, sexual orientation, disability, or religion? If yes, please explain, and include in your answer any actions you undertook to change such policies.

No.

21. List any non-legal activities in which you have been involved that enhance your qualifications for the municipal bench, whether civic, charitable, or otherwise. Also list any military service, giving branch, rank, dates of service, and type of discharge.

I am an active member of Our Lady of Fatima Parish and School, Seattle, WA. I currently serve as a member of the Pastoral Council (providing the Pastor with advice and guidance on parish administration). From 2016-2018, I served on the School Commission, advising the school principal on school budget and other issues. From 2002 – 2016, I volunteered as a member of the Magnolia Moms group at our church. This group was a charitable organization focused on supporting women's and children's charities in our community. For three years, I co-chaired the Magnolia Moms Winter Coat Drive that provided hundreds of coats to these charities. I also volunteered as a Religious Education Catechist from 2001-2013, teaching religion to first grade students in our parish.

I served on the board of the Magnolia Little League from 2013-2018. During that time, I was the Vice President, Softball Division. Under my leadership, the softball program grew from 50 participants to 130 participants during a three-year period, making it the second largest program in the City of Seattle. I was instrumental in developing a new division in the city-wide district that promoted the development of younger players in the league. Additionally, I served as an assistant coach for tee-ball and softball teams during the 2012-2014 seasons.

22. State those qualities that you consider to be most important in a person holding judicial office.

Judicial officers should above all else act with integrity, fairness, and compassion. All people have implicit bias and view cases through the lens of their own personal experience. Judges should be particularly aware of their implicit biases, and work to counteract those biases as they rule on issues before them. Judges should also be able to listen to opposing arguments with an open mind and a willingness to change their mind on any given issue. Judges must also be well versed in the law, and must be willing to take the time to research and study issues raised in the cases before them.

23. State your reasons for seeking appointment to the municipal court bench. Include those qualities you possess that you list in question 22.

I am seeking this judicial appointment because I believe our city and state courts need experienced, fair judges who will keep an open mind about issues before them, and who will aspire to make sound legal rulings free from implicit bias or political influence. My extensive experience in criminal appellate practice makes me uniquely qualified to make such decisions, including decisions related to novel legal issues.

I aspire to be a fair judge who accurately applies the law to cases before me with compassion, kindness, and sound legal reasoning. I want to promote faith and confidence in our judicial system, through my contact with lawyers, defendants, jurors and all court

staff. I intend to promote civility among advocates, provide a bridge between the courts and other branches of government, and continue to raise the level of practice in our local courts.

My experience over the past seven years as a Pro Tem Judge in several jurisdictions, as well as my prior experience as an advocate in Superior Court and in the appellate courts, has prepared me well for a full-time position as a Municipal Court Judge, by providing me with perspective on different management systems, forms, and procedures. In order to correct systemic and institutional bias and racism in the criminal justice system, judges must be open to changing the status quo. My personal research and exploration of evolving research and innovations in criminal justice has broadened my view of ways to reform our courts to support rehabilitation and diversion programs, while protecting the community from more violent offenders.

24. List any honors, prizes, awards, or other forms of recognition that you have received, whether professional or civic.

Professional -- FBI Prosecution Recognition Award, January, 2002 (recognizing my role in prosecution of bank robberies involving FBI personnel in State Court proceedings).

Civic -- Little League International Softball Volunteer of the Year, 2017

25. Give names, addresses, and telephone numbers of five attorneys or judges who know you best, including at least two attorneys who have opposed you in cases. The Mayor is not seeking letters of recommendation at this time.

Because I have not practiced law as an advocate since 2009, and because I have not personally handled a trial as an advocate since 2001, it is difficult for me to identify attorneys who were opposing counsel in these cases. During my appellate work, Nancy Collins, Washington Appellate Project, 1511 3rd Ave Ste 610, Seattle, WA 98101-3647, 877-587-2711 and Eric Broman, Nielsen Koch, 1908 E Madison St., Seattle, WA 98122-2842, 206-623-2373 each opposed me on a number of appellate cases during my service at King County PAO. The following judges know me well and can serve as professional references.

- Judge Adam Eisenberg, [REDACTED] (Seattle Municipal Court)
- Judge Ed McKenna [REDACTED]
(Seattle Municipal Court Judge, retired)
- Judge Steve Rosen [REDACTED] (King County Superior Court Judge and former Seattle Municipal Court Judge)
- Judge Anne Harper [REDACTED] (King County District Court Judge)
- Judge Arthur Chapman, [REDACTED] (King County District Court Judge)

26. Please provide information on:

A. Employment history (legal or non-legal)

My legal employment history is documented above, as well as my experience in civic and religious volunteer activities.

B. Have you been ordered to pay sanctions to a Court? If your answer is yes, please provide details.

No.

C. Provide the names of five (5) professional references who have known you for at least five years.

- Jim Whisman, [REDACTED] (KCPAO Appellate Unit Chair)
- Ann Summers, [REDACTED] (KCPAO colleague)
- Erin Ehlert, [REDACTED] (KCPAO colleague)
- Robert Flennaugh, [REDACTED] (Criminal Defense Attorney)
- Ed Allen, [REDACTED] (Criminal Defense Attorney)

D. Provide the names and telephone numbers of at least three and no more than 5 personal references who have known you for at least five years.

- Bill Condon, [REDACTED] (Executive Vice President and Managing Director at Colliers International, close personal friend)
- Nicholas Ford, [REDACTED] (Principal, Our Lady of Fatima School)
- Cammy Hendrix, [REDACTED] (Victim Assistance Unit Supervisor, King County Prosecuting Attorney's Office, neighbor and friend)

E. Either in your own name or any pseudonym, have you written any published or posted article, editorial or opinion piece (paper or electronic), commented on any blog or other story, been quoted in any news article or blog post, or appeared in any content broadcast on the radio or television? If your answer is yes, please list all such items and provide copies if possible.

- **Contributing Essayist, This I Believe: Life Lessons**, Dan Gediman, John Gregory and Mary Jo Gediman, eds., 2011. Selected for audio recording of essay, broadcast on The Bob Edwards Show, KPLU 88.5FM, October 14, 2011. (Copy attached, and text and audio available at: <http://thisibelieve.org/essay/45994/>)
- **Note, Minimum Recycled Content Requirements for Virginia: One Solution to the Solid Waste Crisis**, 13 Va. Env't'l L. J. 271 (Winter 1994). This note was written while I was a student at University of Virginia School of Law, and was published under my maiden name, Catherine Myers. (Copy attached, as "Binder3.pdf")

CATHERINE MARIE McDOWALL

**SUPPLEMENTAL
APPLICATION MATERIALS
FOR
APPOINTMENT TO
SEATTLE MUNICIPAL COURT**

BAR ASSOCIATION RATINGS/ENDORSEMENTS

Index

King County Bar Association – Well Qualified, *See letter attached.*

Loren Miller Bar Association- Qualified, *Letter forthcoming and see online rating*

<https://www.lmba.net/judicial-evaluations>

Washington Women Lawyers- Exceptionally Well Qualified, *See letter attached.*




kcba.org

Catherine McDowell


September 10, 2020

Dear Ms. McDowell:

This letter is to inform you that the King County Bar Association's Judicial Candidate Evaluation Committee has rated you "Well Qualified" for the position of Seattle Municipal Court Judge. This rating is valid for all courts of Limited Jurisdiction in King County.

Your rating will remain in effect for appointment or election until August 20, 2023 three years from the date of your rating which was August 20, 2020. Should you have any questions about your rating, please contact KCBA staff member Anne Daly at AnneD@kcba.org or at 

The King County Bar Association realizes that our judicial screening process is a demanding one and your participation is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John McKay", written over a light blue horizontal line.

John McKay, KCBA President
2020-2021



Judicial Evaluation Committee

Via Email (catherinemcdowall@gmail.com)

PERSONAL AND CONFIDENTIAL

September 17, 2020

Catherine McDowall
2531 29th Ave. W
Mercer Island, WA 98199

Re: King County Chapter Washington Women Lawyers Judicial Evaluation

Dear Ms. McDowall:

The Judicial Evaluation Committee and the Board have completed their process for evaluation. The King County Chapter of Washington Women Lawyers has confirmed your rating of **Exceptionally Well Qualified** for King County Courts of Limited Jurisdiction. This rating is effective for three (3) years, through September 16, 2023.

We will forward your rating to the appropriate appointing authority if you seek appointment and if you file for election, we post it on votingforjudges.org. We will also post it on our website.

I have scanned and sent this letter via email to save on resources. Please let me know if you would like a hard copy. Thank you for interviewing with our committee.

Very truly yours,

Mary B. Reiten
Judicial Evaluation Committee Co-Chair
Washington Women Lawyers King County chapter

cc: Sarah Perez, KCWWL JEC Co-Chair
KCWWL President
KCWWL Secretary

LETTERS OF SUPPORT

Index

The Honorable Presiding Judge Willie Gregory, Seattle Municipal Court

The Honorable Judge Adam Eisenberg, Seattle Municipal Court

The Honorable Judge Faye Chess, Seattle Municipal Court

Lori Ann Holtzapple, Court Manager, King County District Courts

James M. Whisman, Senior Deputy Prosecuting Attorney, Appellate Unit Chair,
King County Prosecutor's Office



WILLIE GREGORY
PRESIDING JUDGE

September 17, 2020

The Honorable Jenny A. Durkan
Mayor, City of Seattle
600 Fourth Avenue, 7th Floor
Seattle, WA 98104

RE: Letter of Recommendation for Catherine McDowell

Dear Mayor Durkan:

I highly recommend Catherine McDowell to serve as a Judge in Seattle Municipal Court. I believe she will bring a lot to the bench.

Catherine McDowell has been working as a Pro Tem Judge in Seattle Municipal Court for seven years. During that time, she has stood out as a Pro Tem Judge. She has responded on short notice when called by court staff to cover for a judge who is sick or on vacation and handle that judge's calendar with intelligence and respect for the parties. Catherine has gained the respect of the city attorneys and defense attorneys who practice before her. Likewise, she has gained the respect of the judges of Seattle Municipal Court due to her willingness to step in and preside over any type of case.

Catherine will be able to come to the Seattle Municipal Court bench with minimal training due to her knowledge of our laws, procedures, and policies. She has shown the willingness to seek advice if an issue comes up that is novel to her.

The Seattle Municipal Court has taken upon itself to put into effect numerous court reforms. Catherine is knowledgeable about these reforms and she is willing to engage in these reforms with the bench. She is a collaborator and with the current court she will be an innovator helping to advance the court's reforms.

I am looking forward to working with her as a judge in Seattle Municipal Court.

Sincerely,
Willie J. Gregory
Willie Gregory, Presiding Judge
Seattle Municipal Court

THE MUNICIPAL COURT OF SEATTLE
Adam Eisenberg
Judge



September 16, 2020

The Honorable Jenny A. Durkan
Mayor, City of Seattle
600 Fourth Avenue, 7th Floor
Seattle, WA 98104

RE: Letter of Reference for Catherine McDowall for Seattle Municipal Court

Dear Mayor Durkan:

It is my great pleasure to write this letter in support of Pro Tem Judge Catherine McDowall for an appointment to the Seattle Municipal Court bench.

I have known Pro Tem Judge McDowall since 2013 when she first started serving as a pro tem judge for SMC. Since then, she has proven time and again that she is an excellent jurist. She has handled every type of calendar, from jail arraignments and pretrial hearings to jury trials and reviews. She does so with great skill and empathy, and has earned the respect of defense attorneys, prosecutors, and our court staff. In addition, she has extensive experience as a pro tem for King County Superior and District Courts.

Our bench has so much confidence in Pro Tem Judge McDowall that she has been preassigned legally complex and high profiles cases. For instance, in 2014 she presided over a three-week trial involving several Seattle firefighters who had been charged with assault. She has also issued written opinions in cases involving challenging legal issues, including a well-reasoned 20 page decision regarding First Amendment implications of a 2018 multiple-defendant protest case.

Over the past seven years, Pro Tem Judge McDowall and I have often discussed cases we're handling and challenging legal issues that come up. I always find her counsel to be insightful, and she constantly impresses me with her keen knowledge of the law, her compassion, and her strong sense of justice.

Pro Tem Judge McDowall is, simply put, an extraordinary person and excellent jurist, and she comes to you with my highest recommendation.

Yours sincerely,

Adam Eisenberg
Judge, Seattle Municipal Court

Seattle Justice Center, 600 Fifth Ave. Room 1037, P.O. Box 34987, Seattle, WA 98124-4987
Tel: (206) 684-8709 Fax: (206) 615-0766

Printed on Recycled Paper

THE MUNICIPAL COURT OF SEATTLE

Faye R. Chess
Judge



The Honorable Mayor Jenny Durkan
Office of the Mayor
P.O. Box 94749
Seattle, WA 98124-4749

Via Email: Michelle.Chen@seattle.gov

Dear Mayor Durkan:

It is my pleasure to recommend Catherine McDowall for the open judicial position in Seattle Municipal Court (SMC).

Catherine has served as a SMC Pro Tem Judge and Magistrate since 2016. She has routinely presided on matters ranging from arraignments, pre-trial hearings, trials, sentencing hearings, review hearings, and traffic infractions hearings.

Catherine is well versed on Washington State laws. She generates well-developed and comprehensive rulings. She is well respected in this courthouse. I know her to be of high intelligence and good character. She approaches her work at SMC with due diligence, taking pride in her work, and possessing excellent work ethics. She has demonstrated that she can work collaboratively with the court's staff, Magistrates, and Judges. It is rare and ever has an affidavit been filed against her by either the city assistant attorneys, public defenders, or defense bar.

Based on her experience as a long-term Pro Tem Judge in SMC, King County District Court, and King County Superior Court, Catherine will be an invaluable asset to our bench. In the times of COVID and limited in-person staffing, she will be able to assume the position with little to no training necessary.

I regard Catherine as a legal professional who is committed to the rule of law and dedicated to making sure that the courts of law are considered an independent and coequal branch of government which is accessible to the public and provides fair and impartial justice.

I have no doubt Catherine will be an invaluable asset to SMC, a community court.

Sincerely,

A handwritten signature in black ink, appearing to read "Faye R. Chess".

Judge Faye R. Chess

Seattle Justice Center, Room 1037, 600 Fifth Ave., P.O. Box 34987, Seattle, WA 98124-4987
Tel: (206) 684-8709 Fax: (206) 615-0766

Printed on Recycled Paper

September 17, 2020

The Honorable Mayor Jenny Durkan
Office of the Mayor
PO Box 94749
Seattle, WA 98124-4749

RE: Letter of Recommendation for Catherine McDowall

Mayor Durkan,


I am grateful for the opportunity to write this letter on behalf of Catherine McDowall for Seattle Municipal Court Judge. I have been the King County District Court Seattle Manager since 2013 and had the pleasure of meeting Ms. McDowall in 2016.

The first time that I met Ms. McDowall was when she came to King County District Court to be sworn in by one of our Judges. We spoke at length about her working experience as a Pro Tem Judge in Seattle Municipal Court. I found her to be a professional and amiable person with a depth of knowledge and experience with both civil and criminal calendars. She also had a clear desire to work with our court.

Her demeanor with me, my staff, our sitting Judges, and all parties to a case has been exemplary in that she has always treated everyone in an equitable manner and with the utmost respect. I have worked with many Pro Tem Judges over the years, and she has continuously been asked to return. It is vital to any court to maintain its impartiality. Ms. McDowall has maintained her commitment to taking into consideration all those aspects of a case, from a victim's account of an incident to a defendant's financial resources, when executing any type of order.

When Ms. McDowall informed me that she was pursuing this position, I was both excited and sad. I was excited because I believe that she would be an asset to the criminal justice system within King County as a sitting Judge and extremely sad because I would no longer be able to ask her to represent King County District Court on the bench. From my experience working with her as a Pro Tem Judge over the past 4 years, she has shown me her dedication and commitment to serving our community. I hold Ms. McDowall in the highest of regards and am confident that she would perform her duties as a Seattle Municipal Court Judge with the utmost of competence and enthusiasm.

Sincerely,

A handwritten signature in cursive script, reading "Lori A Holtzapple".

Lori A Holtzapple
King County District Court – Court Manager
516 3rd Ave, Room E327
Seattle, WA 98104
Phone: 206-477-6975

September 16, 2020

The Honorable Mayor Jenny Durkan
c/o Michelle Chen
Office of the Mayor
P.O. Box 94749
Seattle, Washington 98124-4749

Re: Letter of Recommendation for Catherine McDowall

Dear Mayor Durkan:

It is my pleasure to recommend Catherine McDowall for Seattle Municipal Court judge.

I have been chair of the appellate unit in the King County Prosecutor's Office since 1997. Ms. McDowall served as a deputy prosecutor on the appellate unit in the year 2000 and again from 2003 until 2009. She worked on a number of very challenging cases during that time and I was always impressed by her intelligence and efficiency in sorting through complex legal issues. Ms. McDowall is a very talented lawyer and a gifted writer.

Ms. McDowall is also highly principled and always considered the effects of her decisions on defendants and on the community. I could always depend on her to think independently and to ask tough, critical questions of her own work and the work of others on the unit. Her willingness to think outside the box and to speak up for what is right – even as a young lawyer and even when her input met with resistance – was much appreciated.

Ms. McDowall is also an excellent colleague. She collaborated very well with her peers, with people she supervised, and with staff. She was always entirely professional, approachable, and eager to learn, and as a senior deputy, eager to teach others. I am certain that she has retained these traits and that her basic human decency would shine through in her service to the people of Seattle. I am confident that her record as a pro tempore judge in both Seattle Municipal Court and the King County District Courts would bear this out.

Please feel free to call if you have any questions about Ms. McDowall's experience or qualifications to be a Seattle Municipal Court judge.

Sincerely,



James M. Whisman
Senior Deputy Prosecuting Attorney
Appellate Unit Chair
King County Prosecutor's Office
206-477-9577

RESUME/COVER LETTER

Catherine McDowall

WSBA #27737

September 9, 2020

Michelle Chen
City of Seattle Mayor's Office
600 4th Avenue, 7th Floor
Seattle, WA 98104

Ms. Chen,

I am writing to request consideration for appointment to the judicial vacancy on Seattle Municipal Court. I have previously submitted materials in support of this application via email. Since submitting those materials, I have received a rating of "Well Qualified" from the King County Bar Association. I have evaluation applications pending with the King County chapter of Washington Women Lawyers and the Loren Miller Bar Association this week and will forward information on their ratings when I receive them.

From 1998 through 2009, I served King County as a Deputy Prosecuting Attorney. My seven years of experience in the appellate division of that office reinforced for me the importance of fair, well-reasoned legal decisions and accurately completed forms. I also gained a broad understanding of Washington law as it is applied in the criminal courts of this State. After the birth of my fourth child in 2009, I resigned from the Prosecutor's office to focus on my family and my local community.

For the past seven years, I have been serving as a Pro Tem Judge in Seattle Municipal Court and in King County District Court. I have become well-acquainted with the procedures and personnel at the Court, and I have served in each of the specialty courts including Mental Health Court, Community Court, and Veteran's Court. In addition, I often served in the jail on the first appearance and warrant calendars. During this time, I have demonstrated an ability to handle the high volume of cases in municipal court efficiently and fairly. I consider myself a lifelong learner and pride myself on my ability to seek competing opinions and information on any given issue, and to receive information with an open mind to render a fair decision that comports with applicable law.

Based on this experience, I am confident that I am a good fit for this judicial vacancy. I have enclosed a current resume for your review. Please let me know if I can provide any additional materials or information to aid your decision. Thank you for your consideration.

Sincerely,



Catherine M. McDowall

Catherine McDowall

WSBA #27737

EXPERIENCE

JUDGE PRO TEMPORE

- **King County Superior Court, Juvenile Division.** 2015-present.
 - **King County District Court, Seattle and Shoreline Divisions.** 2016-present.
 - **Seattle Municipal Court.** 2013-present.
- Preside over civil, criminal, and infraction hearings.

KING COUNTY PROSECUTING ATTORNEY OFFICE

- **Senior Deputy Prosecuting Attorney, 2005-2009.**
- **Deputy Prosecuting Attorney, 1998-2005.**
 - Served King County by prosecuting misdemeanor and felony crimes at all levels of Washington's court system and at all levels of prosecution from filing through appeals.
 - From 2002-2009, served in Appellate Unit prosecuting appeals at all levels of Washington State court system, including two cases before the State Supreme Court.
 - Conducted in-house CLE trainings on a variety of topics related to criminal law.

SONNENSCHNEIN, NATH & ROSENTHAL (Now, Dentons), Washington, D.C.
Litigation Associate, 1995-1997. Practiced civil litigation in state and federal courts.

EDUCATION

University of Virginia School of Law, Charlottesville, VA. J.D., May, 1995.
Northwestern University, Evanston, IL. B.A., May, 1991.

COMMUNITY INVOLVEMENT

Our Lady of Fatima Parish and School, Seattle, WA

- **Member, Parish Council, 2018-present.** Advise pastor on parish matters.
- **Member, School Commission, 2016-2018.** Advise principal on school budget and other issues.
- **Magnolia Moms, Member, 2002-2016.** Assist in activities of local charitable organization whose mission is to help women's and children's charities in King County.
- **Religious Education Catechist, 2001-2013.** Taught religion to first grade students in parish.

Magnolia Little League, Seattle, WA

- Board member, 2013-present.
- Vice President, Softball Division, 2013-2017.
- Assistant coach for tee ball and softball, 2012-2014.
- Little League International Softball Volunteer of the Year, 2017.

PUBLICATIONS

Contributing Essayist, This I Believe: Life Lessons, Dan Gediman, John Gregory and Mary Jo Gediman, eds., 2011. Selected for audio recording of essay, broadcast on *The Bob Edwards Show*, KPLU 88.5FM, October 14, 2011. <http://thisibelieve.org/essay/45994/>

Note, *Minimum Recycled Content Requirements for Virginia: One Solution to the Solid Waste Crisis*, 13 Va. Env't'l L. J. 271 (Winter 1994).

WRITING SAMPLE

2019 MAR -6 PM 4:02

COURT RECORDS

IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE
KING COUNTY, WASHINGTON

City of Seattle,

Plaintiff,

vs.

Robert Allen BARNES, Helena BENEDICT,
Aaron S. BROUILLETTE, Kaelyn Marie
CALDWELL, Sean Patrick CARNEY, Victoria Jo
DeMARCO, Eva R. DOUGHERTY, Max R.
FRIEDFELD, Sean Kenji FUJIMORI, Erin Marie
GARCIA, Anthony Lynn HADDEN, Ross G.
KIRSHENBAUM, Daniel LANGE, Barbara Jean
LEWY, Cynthia LINET, Sareni RUIZ, Alan K.
SATO, Jason Lee SCHROEDER, Noel Randall
SHERRARD, Megan A. YBARRA, and Antonio
S. ZAMORA

Defendants;

Case No. 638607, 636226, 637640,
636225, 637310, 635421, 635420,
635423, 637309, 634875, 634877,
635424, 637308, 634882, 634876,
635419, 637305, 634880, 637668,
636277, and 637307

ORDER ON CONSOLIDATED
MOTIONS TO DISMISS AND FOR
OTHER RELIEF

I. Introduction

A. Factual Background

The cases before this court for these motions arose from two separate demonstrations held in downtown Seattle. The City of Seattle charged twelve defendants as a result of arrests made during a May 7, 2018 demonstration in the 1300 block of Second Avenue, near a Chase bank branch. Four of these defendants (Brouillette, Lange, Fujimori, and Zamora) were

1 charged with pedestrian interference and obstruction for failing to heed police direction to
2 come down from temporary structures ("tarpees") erected by the group in the street. Seven
3 defendants (Carney, Garcia, Hadden, Lewy, Linet, Schroeder, and Sato) were charged with
4 pedestrian interference for obstructing traffic on Second Avenue by standing in the roadway
5 with linked arms, and for failing to disperse when ordered by police. Defendant Barnes was
6 charged (on a complicity theory) with pedestrian interference and obstruction¹ for his role in
7 coordinating the demonstration.

8 The City of Seattle charged nine other defendants (Benedict, Caldwell, DeMarco,
9 Dougherty, Friedfeld, Kirshenbaum, Ruiz, Sherrard, and Ybarra) with pedestrian interference
10 and obstruction resulting from arrests made during a demonstration on June 5, 2018. This
11 demonstration also took place on Second Avenue in the downtown corridor. These defendants
12 blocked all lanes of traffic by linking arms in a "sleeping dragon" apparatus that included PVC
13 piping treated with a number of materials and substances designed to frustrate police attempts
14 to disperse the group.

15 **B. Procedural History**

16 In late September or early October, the Seattle City Attorney filed charges against each
17 of these defendants for their involvement in the above-described protests. At or after pretrial
18 hearings, the parties filed the following substantive motions:

- 19 • BARNES filed a "MOTION FOR DISMISSAL, SANCTIONS OR
20 DISCOVERY" on December 27, 2018. (hereinafter, "Barnes Motion to
Dismiss")
- 21 • BARNES filed a "MOTION TO DISMISS OBSTRUCTING COUNT BASED
22 ON *APPRENDI*" on December 27, 2018 (hereinafter "*Apprendi* Motion")

23 ¹ At the motions hearing on March 1, 2019, the City moved to dismiss the Obstruction
charge and that motion was granted by this court.

- 1 • FUJIMORI filed a “KNAPSTAD MOTION TO DISMISS FOR FACTS
2 INSUFFICIENT TO SUPPORT PROSECUTION” on February 2, 2019
(hereinafter, “Fujimori Knapstad Motions”)
- 3 • LANGE filed “MOTIONS TO JOIN CO-DEFENDANTS MOTIONS AND *DE*
4 *MINIMIS* MOTION TO DISMISS” on February 12, 2019 (hereinafter, “*De*
5 *Minimis* Motion”)
- 6 • LINET filed “MOTIONS TO JOIN CO-DEFENDANT MOTIONS AND FOR
DISMISSAL AND DISCOVERY” on February 8, 2019 (hereinafter “Linet
Motion to Dismiss”)
- BARNES also filed a *Knapstad* Motion specific to the facts of his case, on
February 18, 2019 (hereinafter “Barnes *Knapstad* Motion”)

7 Prior to or at oral argument for these motions, each of the defendants moved to join in
8 the motions made by the other defendants. The cases were consolidated for consideration of
9 these joint motions. The cases have not been joined for trial or any other purpose.

10 In the following ruling, the court will address each motion as noted above. To the
11 extent that any defendant has joined in those motions, the ruling applies with equal force to
12 each of those defendants, whether specifically named or not.

13 14 **II. Barnes Motion to Dismiss**

15 Defendants have raised a number of overlapping issues in these consolidated
16 motions. Many of the legal theories raised in the motions to dismiss rest on the premise that
17 the prosecutions are unjust because the defendants were merely exercising their constitutional
18 right to free speech. Therefore, this court will first address the Barnes Motion to Dismiss. The
19 primary theories of Barnes’s motion is that the First Amendment protects the defendants from
20 “non-violent” protests, and that the “unfettered discretion” exercised by the police violated the
21 rights of the defendants.

22 It is unquestioned that the purpose of each of the demonstrations was to raise awareness
23 of various political causes. Thus, the defendants were clearly engaging in protected speech, at

1 least at the outset of their demonstrations. The arrests, therefore, resulted from police actions
2 that placed a time, manner, and place restriction on the exercise of this right. The central
3 question in these cases is whether the police actions place *unconstitutional* restrictions on the
4 time, manner, and place of the defendants' speech.

5 This analysis has three inquiries. One, was the action of the police content
6 neutral? Two, was the police action narrowly tailored to serve a significant government
7 interest? And three, did the police actions leave ample alternative channels of communication?
8 *Menotti v. City of Seattle*, 409 F.3d 1113, 1128 (9th Cir. 2005).

9 First, the police action in this case resulted from policies that were clearly content
10 neutral. Neither the pedestrian interference ordinance nor the obstruction ordinance seek to
11 regulate speech at all, much less speech containing any particular message. SMC 12A.12.015;
12 SMC 12A.16.010. Rather, each of these ordinances regulates *conduct*. Therefore, the question
13 becomes whether the *police action* was content neutral. In each of these cases, the stated
14 reasons for arresting the defendants had nothing at all to do with the content of the
15 speech. Rather, the arrests resulted from a police determination that the disruption to city
16 traffic was substantial, and that the demonstrators' and spectators' safety may be at risk. These
17 decisions had nothing at all to do with the content of the message conveyed by either group of
18 demonstrators. Therefore, the police actions were content neutral.²

19 Second, the police action was narrowly tailored to serve a significant government
20 interest. "No one could seriously dispute that the government has a significant interest in

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22 ² Notably, the police report for the June demonstrations does not even mention the purpose
23 of the demonstration. The only reference to the content or purpose of the demonstration is
contained in the parties' briefs on these motions, and possibly the body-cam video that might
depict signs or other indications of the purpose of the demonstration.

1 maintaining public order.” *Menotti*, 409 F.3d at 1131. City governments in particular have a
2 significant interest in maintaining the flow of traffic within city limits. As the U.S. Supreme
3 Court has observed, “the exercise of First Amendment rights may be regulated where such
4 exercise will unduly interfere with the normal use of the public property by other members of
5 the public with an equal right of access to it.” *Food Employees v. Logan Valley Plaza*, 391
6 U.S. 308, 320-321 (1968). Moreover, when the exercise of free speech involves conduct
7 unrelated to the content of the message, governments undoubtedly may act to restrain the
8 conduct that interferes with public safety or order. As one commentator has noted:

9 Blocking highways does not constitute legally protected speech.
10 Disrupting traffic is dangerous, and can be fatal, both to the protesters and
11 to the public, especially if emergency responders cannot traverse public
 roads. Police may legally arrest or disperse these activists, who are
 engaging in civil disobedience.³

12 In both the May and June protests, police personnel were following standard guidelines
13 that permit officers to move to disperse demonstrations when there is a substantial obstruction
14 of traffic.⁴ These policies were clearly drafted and adopted to further the goal of permitting
15 reasonable First Amendment expression, balanced against the goal of maintaining public
16 order. In the cases before this court, police permitted the disruption of traffic for a substantial
17 period of time (several hours, in the case of the May protests) before attempting to clear the
18 streets of the intentional blockage by the demonstrators.

19 Third, the police actions in this case allowed for ample alternative channels of
20 communication. The police first tried to move the participants out of the street and onto the
21

22 ³ Erica Goldberg, *Competing Free Speech Values in an Age of Protest*, 39 *Cardoza Law*
23 *Review*, 2163, 2206 (Aug. 2018).

⁴ See Barnes Supplemental Materials, Exs. 5 and 6.

1 sidewalks. The only people arrested were those who refused to abide by police orders to leave
2 the roadway. There is no evidence that the police attempted to prevent protestors from
3 continuing their demonstration from the sidewalks. It is clear that the main purpose of the
4 police actions in this case was to clear the roadway to allow traffic to progress down this busy,
5 main thoroughfare.

6 The First Amendment only requires that the government refrain from denying
7 "reasonable opportunities" for communication. In this case, the police did not attempt to
8 silence the demonstrators in any way; rather, they simply tried to get the defendants to stop
9 obstructing traffic. Thus, the actions of police and city government here were aimed squarely
10 at behavior and actions, not at expressive speech.

11 In short, the time, place and manner restrictions placed on the demonstrators in these
12 cases were entirely reasonable. Police allowed the protests to continue for several hours, and
13 only when the disruption to pedestrian and vehicle traffic became extreme did the the police
14 attempt to move the demonstrations off the roadway. In the June demonstration, there is even
15 evidence that citizens affected by the blockage were becoming angry and threatening.⁵ The
16 police actions were designed to protect the protesters as much as to allow traffic to progress.

17 The defendants have argued that the guidelines and policies adopted by the police give
18 too much discretion to the officers on the scene. Many of the cases they have cited in support
19 of this argument, however, all involve permitting decisions or policies. *Battle v. City of Seattle*,
20 89 F. Supp. 3d 1092 (W.D. Wash. 2015) (challenging Street Use Ordinance); *Seattle Affiliate v.*
21 *City of Seattle*, 550 F.3d 788 (2008) (challenging authority of police chief to issue, deny or

22
23 ⁵ See, e.g., SPD GO 2018-202829 at page 15 of 181 (911 caller complaining about the
protest told dispatcher "I'll go down there and take care of this myself!" and hung up on the
dispatcher).

1 modify parade permits). These challenges, therefore, involve prior restraints by government on
2 speech activities and are subject to a different legal analysis. Furthermore, the demonstrations
3 in the cases before this court were both unpermitted demonstrations for which police had little
4 or no notice to prepare.

5 Police procedures (whether reduced to writing as in the "Rules of Engagement" or
6 unofficially "announced" in public statements by police officials) cannot, and should not, be
7 evaluated under a prior restraint analysis. These policies are designed to govern a wide range
8 of situations and behavior, in order to allow police to evaluate individual safety concerns,
9 disruption of traffic, and use of resources. Police officers necessarily exercise their discretion
10 on how best to ensure community safety every day. Unless that discretion is used in a
11 conclusively arbitrary or discriminatory way, the police action does not violate the First
12 Amendment. *See People v. Galpern*, 181 N.E. 572 (N.Y. 1932) ("The courts cannot weigh
13 opposing consideration as to the wisdom of the police officer's directions when a police officer
14 is called upon to decide whether the time has come in which some directions are called for.")

15 Moreover, the procedures and policies announce a number of considerations police will
16 use when deciding whether to disperse a street or traffic disruption. These content neutral
17 considerations (whether the disruption to traffic is substantial, whether other critical services
18 must be diverted to handle the protest, whether persons or property are endangered) are
19 reasonable guidelines for police to follow when evaluating whether and when to put a stop to
20 disruptive protests like the ones at issue here. Police made efforts to allow the protests to
21 continue for a significant period of time. Once the police began warning protesters to leave the
22 streets and it became clear that the protesters would not obey police commands to clear the
23

1 area, it was entirely proper for police to arrest the defendants for violating pedestrian
2 interference and obstruction ordinances.

3 [T]he law is clear that while speech may be protected, Plaintiff's choice to
4 disobey police orders is not...A refusal to obey such an order can be
5 justified only where the circumstances show conclusively that the police
officer's direction was purely arbitrary and was not calculated in any way
to promote the public order.

6 *Mediavilla v. City of New York*, 259 F. Supp. 3d 82, 99 (S.D.N.Y. 2016).

7 Because the police action in these cases were plainly and conclusively related to
8 maintaining (or restoring) public order by clearing streets to permit the flow of traffic to
9 resume, there can be no question that these were not arbitrary actions. Once the police ordered
10 the defendants to disperse, and the defendants disobeyed those police orders, the defendants
11 were not lawfully exercising their rights to freedom of speech or assembly.

12 Based on this analysis, the court denies Barnes Motion to Dismiss.⁶

13 Defendant Barnes has not offered any evidence that the discovery he seeks related to
14 police policies on how to handle public demonstrations would affect the analysis above in any
15 way. Therefore, Barnes Motions for Discovery or Sanctions are also denied.

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22 ⁶ Defendant Barnes also relies on international law, which he argues provide "parallel
23 protections" to the U.S. Constitution's First Amendment. Barnes cites no authority that
indicates that international law provides any protection that is greater than that provided by
the U.S. Constitution. Absent such authority, this court denies Barnes's Motion to Dismiss
on this ground as well.

1 **III. Knapstad Motion**

2 **A. Fujimori *Knapstad* Motions**

3 **1. Pedestrian Interference Charges**

4 A trial court may dismiss a prosecution prior to trial, "if the State's pleadings . . . are
5 insufficient to raise a jury issue on all elements of the charge." State v. Knapstad, 107 Wn.2d
6 346, 352, 729 P.2d 48 (1986). Fujimori argues that the pedestrian interference and obstruction
7 charges as to each defendant must be dismissed because the City cannot prove that he violated
8 the ordinances as a matter of law.

9 The pedestrian interference ordinance provides:

10 B. A person is guilty of pedestrian interference if, in a public place,
 he or she intentionally:

- 11 1. Obstructs pedestrian or vehicular traffic; or
 2. Aggressively begs.

12 SMC 12A.12.015. The ordinance defines "obstructs pedestrian or vehicular traffic," but
13 specifically exempts "Acts authorized as an exercise of one's constitutional right to picket or to
14 legally protest." SMC 12A.12.015(A)(4).

15 Fujimori contends that because his actions constitute an exercise of his constitutional
16 rights to free speech, the City cannot prove that he obstructed pedestrian or vehicular traffic, as
17 defined by the statute, beyond a reasonable doubt. The question of whether the defendants
18 were exercising "authorized" constitutional rights or whether they were "legally protest[ing]" is
19 a question of law to be determined by the court. However, as explained in the preceding
20 section, once the defendants failed to heed the officer's directions to clear the street, the
21 defendants' conduct failed to be protected by the First Amendment. Thus, his *Knapstad*
22 argument fails.
23

1 At oral argument, defense counsel asserted that the City would not be able to prove that
2 the defendants "knew" that they were not acting outside the scope of their First Amendment
3 rights when they refused the police orders. This argument fails because under Washington law,
4 a defendant may still be liable if he intends to do an act, even if he is under the mistaken
5 impression that the act does not constitute a crime. RCW 9A.08.010; See also, WPIC 10.01,
6 WPIC 10.02. The defendants' subjective beliefs that that were acting lawfully are irrelevant to
7 these charges, and irrelevant to the *Knapstad* analysis.

8 2. Obstruction Charges

9 Similarly, the obstruction ordinance under which these defendants were charged
10 criminalized "intentionally refus[ing] to cease an activity or behavior that creates a risk of
11 injury to any person when ordered to do so by a public officer." SMC 12A.16.010(A)(3). This
12 ordinance also carves out an exception to conviction, by providing that "No person shall be
13 convicted of violating this section if the Judge determines, with respect to the person charged
14 with violating this section, that the public officer was not acting lawfully in a governmental
15 function." SMC 12A.16.010(B). Thus, if the police were violating defendants' First
16 Amendment rights, the police acted "unlawfully" and this would be a defense to the charge.

17 However, as noted in the previous section, the police acted lawfully when they began to
18 try to clear the streets of the protest. Therefore, the *Knapstad* motion with respect to the
19 obstruction charges also fails.

20 B. Barnes's *Knapstad* Motion to Dismiss

21 Defendant Barnes raises a *Knapstad* motion that only applies to his unique
22 facts. Barnes is described in the police reports as the "organizer" of the May protests, and he
23 served as the main contact between the police and the protesters as the situation

1 progressed. The judge at arraignment was not presented with the complicity theory that is now
2 offered by the City to explain the basis of its charges.

3 Based upon the information contained in the police reports, there is a factual issue as to
4 the extent of Barnes's involvement in the continued conduct of blocking traffic during the
5 duration of the protest. The court denies the motion to dismiss on this basis, without prejudice
6 to Barnes to renew this motion after the City's evidence is produced at trial.

7
8 **IV. Apprendi Motion**

9 Defendants⁷ challenge Seattle's obstruction ordinance as unconstitutional because it
10 violates his Sixth Amendment right to a jury determination of each element of the crime. His
11 claim rests upon the contention that SMC 12A.16.010(B) unconstitutionally removes from jury
12 consideration the question of whether the officer was acting "lawfully" in his actions.

13 This issue was addressed directly in *City of Seattle v. Lewis*, 70 Wn. App. 715 (Div. 1
14 1993). In that case, the appellate court upheld the obstruction ordinance based on a similar
15 challenge:

16 Here, we find the question of whether the public officer was acting
17 legally remains where the Seattle City Council put it -- as a defense
that must be raised by the defendant and ruled upon by the judge.

18 *Lewis*, 70 Wn. App. at 718. This court finds that *Lewis* controls this issue.

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⁷ Barnes's obstruction charge was dismissed on the City's motion at oral argument. Because
the other defendants joined in Barnes motion, the court will still address the legal theory
argued by Barnes with respect to the obstruction charges.

1 Defendants argue that subsequent U.S. Supreme Court decisions effectively overrule
2 *Lewis*.⁸ They are incorrect. In *Apprendi*, *Ring*, *Blakely*, and *Hurst*, a sentencing scheme
3 allowed a judge to make a factual finding that *increased the maximum sentence* for the crime
4 with which the defendant was charged. Similarly, the *Gaudin* Court held that a determination
5 of whether a fact was “material” must be decided by a jury because it was an element of the
6 offense charged. *Gaudin* 515 U.S. at 509. Thus, the determination of materiality was a
7 necessary element to proving the defendant’s liability.

8 In contrast, the provision of the obstruction ordinance here does not increase any
9 penalty to the defendant or enhance the obstruction count in any way. In fact, a judicial
10 determination that the officers were acting unlawfully completely *relieves* the defendant of
11 liability, the exact opposite of the situation present in the *Apprendi* cases. A jury must find that
12 the defendant’s conduct satisfied all the elements of the obstruction charge, namely, that the
13 defendant “intentionally refus[ed] to cease an activity or behavior that creates a risk of injury to
14 any person when ordered to do so by a public officer.” SMC 12A.16.010(A)(3). If the
15 officer’s actions were unlawful, a judge may dismiss a charge. This does not increase any
16 punishment for the offense, it can only negate the charge altogether.

17 More significantly, the determination of whether an officer’s conduct was lawful is a
18 legal determination properly made by the trial judge. Many post-*Apprendi* cases in Washington
19 support this conclusion. For example, in *State v. Wu*, 431 P.3d 1070 (Div. 1 2018), the
20 appellate court held that the “fact” of a prior DUI conviction is an issue for the jury, but the

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22
23 ⁸ *Apprendi* Motion, at 4-6 (citing *United States v. Gaudin*, 515 U.S. 506 (1995); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Ring v. Arizona*, 536 U.S. 584 (2002); *Blakely v. Washington*, 542 U.S. 296 (2004) and *Hurst v. Florida*, 577 U.S. ___, 136 S.Ct. 616, 193 L.E.2d 504 (2016).

1 “validity” of that conviction is a threshold matter to be determined by the trial court. 431 P.3d
2 at 1073. Similarly, in *State v. Gray*, 134 Wn. App. 547, 138 P.3d 1123 (Div. 1 2006), the court
3 held that the fact of a prior convictions for violating a no contact order was properly decided by
4 a jury in a case where defendant was charged with felony violation of a no contact
5 order. However, that court held that the question of the validity of the orders was a threshold
6 question of law to be decided by the trial court. In *Gray*, the court explicitly rejected the
7 defendant’s contention that *Apprendi* or *Blakely* affected the ability of the court to determine
8 these questions of law. *Gray*, 138 P.3d at 1127-28.

9 Seattle’s obstruction ordinance requires a jury to find the *fact* that the defendant refused
10 to cease an activity “when ordered to do so by a public officer.” SMC 12A.16.010(A)(3). This
11 satisfies the Sixth Amendment right to a jury determination on every element of the
12 offense. The question of whether a public officer was acting “lawfully” when giving that order
13 is a legal question that is properly decided by a judge. *Lewis*, 70 Wn. App. at 718-
14 19. *Apprendi* and later cases do not change this analysis or conclusion.

15
16 **V. De Minimis Motion**

17 Defendant Lange moves this court to dismiss the pedestrian interference charges on the
18 basis of SMC 12A.04.180 (De minimis infractions). This ordinance allows, but does not
19 require, a trial court to dismiss a prosecution if it finds that the defendant’s conduct:

- 20 A. Was within a customary license or tolerance not inconsistent
21 B. Did not actually cause or threaten the harm or evil sought to
22 be prevented by the law defining the offense or did so only
23 to an extent too trivial to warrant condemnation of
conviction

1 SMC 12A.04.180. The decision to dismiss a prosecution on this basis is completely
2 discretionary, in that the ordinance explicitly states that a trial court "may" dismiss a
3 prosecution under one of the situations described in the sections that follow.

4 Lange's primary argument is that because the defendants' actions in these cases began
5 from an exercise of First Amendment rights of free speech and assembly, and because the
6 ordinance explicitly exempts acts "authorized as an exercise of one's constitutional right to
7 picket or legally protest," this court should find that the defendants' actions were within the
8 customary license or tolerance of the ordinance.

9 The court rejects this argument. The clear purpose of the pedestrian interference statute
10 is to *prevent obstruction of pedestrian and vehicular traffic*. As noted above, the defendants in
11 these cases were not engaging in protected First Amendment conduct when they refused lawful
12 orders of the police to disperse and refused to remove themselves (and their structures) from
13 the roadway.

14 Moreover, there was nothing "trivial" about the disruptions caused by the defendants'
15 behavior. Both of these demonstrations had a substantial effect on traffic -- not just on the
16 streets where the protests occurred, but also many surrounding streets and throughout the
17 downtown core. The defendants' actions had a substantial impact on the rights of citizens
18 attempting to use the public roadways to travel throughout the city. The defendants' actions
19 required substantial resources to be deployed to maintain order, including specialized units to
20 remove demonstrators from the tops of the tarpees and to disengage the defendants from the
21 sleeping dragon apparatus.

22 The fact that one purpose of the Pedestrian Interference ordinance was to target
23 "aggressive panhandling" in the city does not mean that the ordinance was not also designed to

1 protect public thoroughfares and sidewalks from obstructive behavior. See De Minimis Motion
2 at 6-7 (citing legislative history of the ordinance and “contemporaneous media
3 coverage.”). The preamble of the ordinance mentions not only panhandling but the desire to
4 provide “all citizens ... [with] free and unhampered access to public areas.” This preamble,
5 together with the extraordinarily clear prohibition on obstructing public roadways contained in
6 the ordinance itself, demonstrate the City Council’s intent to prohibit exactly the kind of
7 actions these defendants took to obstruct the flow of traffic. This is not an appropriate instance
8 to use the court’s discretion to dismiss prosecutions as permitted by the *de minimis* ordinance.
9

10 **VI. Linet’s Motion to Dismiss**

11 **A. Prosecutorial vindictiveness.**

12 Defendant Linet first asks this court to dismiss these prosecutions on the basis of
13 prosecutorial vindictiveness. “Prosecutorial vindictiveness occurs when the government acts
14 against a defendant in response to the defendant’s prior exercise of constitutional or statutory
15 rights.” *State v. Korum*, 157 Wn.2d 614 (2006) (internal quotations omitted). Linet argues
16 that the prosecutor’s charging decisions in these cases were pressed “without evidence
17 sufficient to convict” or based on “unjustifiable standards”, (citing *State v. Penn*, 32 Wn.
18 App. 911 (1982)) or that the charging decisions constituted “arbitrary action” that should be
19 dismissed under CrR 8.3(b). (citing *State v. Bible*, 77 Wn. App. 470 (1995)).

20 The thrust of Linet’s claim of vindictiveness relies on the premise that the defendants
21 were merely exercising their constitutional rights to freedom of speech and assembly, and
22 therefore the filing of charges was retaliation for the exercise of this right. But as noted in the
23 previous sections, the defendants’ actions exceeded the scope of their First Amendment rights,

1 and they were not acting lawfully when they failed to heed officers' warnings to clear the
2 streets.

3 Moreover, the very evidence that Linet (and other defendants) cite in support of the
4 vindictiveness claim -- the Op-Ed submitted by the City Attorney to the Seattle Times -- belies
5 their claim of vindictiveness. The Op-Ed explains in detail why the City Attorney filed charges
6 in these cases. His stated reasons for filing charges in these cases (i.e., because the
7 demonstrations "unlawfully interfere[d] with other people's lives and compel[led] the
8 redirection of life-safety resources") demonstrates that he is not filing charges on the basis of
9 the content of any particular message or protest. Rather, the City Attorney lays out the content-
10 neutral basis for his filing standards and gives notice as to how he will choose to exercise his
11 broad prosecutorial discretion. Korum, 157 Wn.2d at 625 (prosecutors have broad discretion to
12 determine when and whether to file criminal charges). The filing of these charges does not
13 support a claim of "vindictiveness" on this basis.

14 **B. CrR 8.3 Motion to Dismiss**

15 Linet also argues that CrR 8.3(b) requires dismissal in this case because the City
16 Attorney violated the Rules of Professional Conduct by making extrajudicial statements
17 regarding his filing decision in the Op-Ed he submitted to the Seattle Times. This claim alleges
18 that Holmes made "false statements of material fact to third parties," (RPC 4.1), making
19 extrajudicial comments that are likely to materially prejudice an adjudicative proceeding (RPC
20 3.6), and making extrajudicial statements that "have a substantial likelihood of heightening
21 public condemnation of the accused." (RPC 3.8(f)).

22 Linet has failed to demonstrate that any of the information contained in Holmes's
23 opinion essay contained false statements of "material" facts. For example, Linet's brief

1 contests the City Attorney's characterization of street blocking protests or use of sleeping
2 dragon type apparatus as "new" is a material falsehood. To a certain degree, Linet's criticism
3 of this characterization is well-taken. Protesters have historically blocked streets for short
4 periods of time with non-violent protests, for example, in the 1960s civil rights protests, the
5 WTO and Occupy Seattle protests in the City of Seattle, and of course, the annual May Day
6 protests. However, the "newness" of this type of protest is not *material* to the issues presented
7 in the cases at bar.

8 Nor does Linet demonstrate that Holmes violated RPC 3.6 and 3.8(f). RPC 3.6
9 explicitly allows attorneys to make statements regarding a number of neutral issues, including
10 any information contained in the public record, and the scheduling of any step in the
11 litigation. RPC 3.8(f) also explicitly exempts

12 statements that are necessary to inform the public of the nature and extent
13 of the prosecutor's action and that serve a legitimate law enforcement
purpose[.]

14 RPC 3.8(f). Linet contends that the Op-Ed essay violates this rule because it was not
15 "necessary" for the City Attorney to inform the public of the reasons for his filing decisions,
16 and because it was likely to "poison the well" of prospective jurors.

17 These claims are also without merit. The extent of media coverage of these types of
18 protests in general, and of these specific protests in particular, depicts a growing public outrage
19 over public inconvenience caused by these demonstrations. The fact that four⁹ of these traffic-
20 blocking protests occurred over a relatively short period of time, each receiving media
21 coverage, illustrates at least a perceived increase in these types of protests. This reaction

22
23 ⁹ The materials submitted by the parties reference at least four protests between March 2,
2018 and June 5, 2018: March 2 (youth jail protest), May 1 (May Day protests), May 7
(tarpee incident), and June 5 (anti-ICE protest).

1 undoubtedly prompted the Seattle Police department's multiple statements regarding why
2 police allow protesters to block city streets, cited heavily by all parties in the briefing. The
3 fiercely emotional reaction of these angry citizens is contrasted with the equally emotional
4 reaction of those who advocate for extensive First Amendment rights. In this climate of
5 political polarization, and in the face of a perceived increase in frequency of street-blocking
6 demonstrations, it is reasonable for the City Attorney to feel a need to explain the filing
7 decisions he makes on these issues.

8 The claim that the City Attorney's essay is likely to influence the jury pool in this case
9 is also without merit. At oral argument, Linet's attorney argued that the "inflammatory"
10 language of the article is likely to unduly influence the jury pool. The fact that the Op-Ed was
11 submitted at the time charges were *filed* mitigates the potential impact of the piece on any jury
12 pool. A different situation would be presented if the Op-Ed appeared on the eve of, or even
13 during, the trials in these cases. Moreover, the impact the essay has on any particular potential
14 juror can likely be remedied during jury selection.

15 C. Motion for Additional Discovery

16 Linet argues that the discovery provided by the City Attorney's office in response to
17 requests for information regarding the extent of police attempts to influence the charging
18 process, internal deliberations on the charging decision before, during and after police
19 interference, internal deliberations on drafting and publishing the opinion letter and prosecutor
20 communications with the Seattle Times. The City Attorney's office responded with a number
21 of communications in response to the discovery request.¹⁰ Many of these responsive
22

23 ¹⁰ At oral argument, the parties referred to dozens of pages of "Bates" numbered discovery.
Only a small portion of these have been provided to the court as attachments to the briefing.

1 documents were redacted, claiming that they contained attorney work product. Linet requests
2 *in camera* review to determine the validity of the work product claims.

3 In order to be entitled to *in camera* review of withheld discovery, defendants must
4 demonstrate at least "some evidence" of vindictiveness in the charging decision. Additional
5 discovery should only be granted in "rare" cases. United States v. Adams, 870 F.2d 1140, 1145
6 (6th Cir. 1989). Defendants must also demonstrate that the information they are seeking is
7 "material" to the issues raised. State v. Mak, 105 Wn.2d 692, 704 (1986).

8 Here, internal deliberations on the drafting and publishing on the opinion letter are
9 completely irrelevant to this case. Communications with Seattle Times about timing of
10 publication are also immaterial. Therefore, the request for *in camera* review of documents
11 related to those issues is denied.

12 A closer question is presented regarding the possibility of a vindictive prosecution claim
13 based upon the potential influence of the police on charging decisions. The only emails related
14 to this issue contain a mere "inquiry" from an officer regarding the status of whether charges
15 were to be filed. This fact of this inquiry, by itself, is insufficient to support a claim of
16 prosecutorial vindictiveness or undue influence that would require dismissal of the charges
17 under CrR 8.3.

18 The unprofessional remarks of individual officers made during the response to the
19 protests are also insufficient, on their own, to support a claim of prosecutorial
20 vindictiveness. The officers' remarks are content neutral in that they do not appear to reference
21 the political issue of the protest, but rather seem to be an expression of frustration at their
22 perceived inability to clear the streets. However, it could be possible to infer that the officers
23

1 were biased against freedom of expression and political protest in general. By themselves,
2 however, these comments were too vague to support a claim of vindictiveness.

3 In the May protests, the police reports indicate that *eleven* individuals were arrested
4 from the street after refusing to obey the officers' orders to clear the area. These individuals
5 locked arms, and refused to move. Only *seven* of these individuals were charged with
6 pedestrian interference. This court is unable to discern from the police reports any difference
7 whatsoever in the behavior of the seven who were charged and the four who were not
8 charged.

9 This fact, taken together with the remarks made by police officers in the body cam
10 video, could theoretically give rise to a claim of prosecutorial vindictiveness *if* the discovery
11 related to the charging decisions reveals a discriminatory purpose or intent to charge some
12 street protesters but not others. This possibility entitles the defendants to an *in camera* review
13 of the redacted correspondence provided to defendants.

14 Thus, this court orders the City Attorney to provide redacted copies of the discovery on
15 this issue that has been provided to the defendants, along with a sealed copy of the unredacted
16 discovery for the court to review. If any of the reacted discovery is not properly characterized
17 as work product or privileged material, or if any of the discovery reveals evidence that could be
18 used to support a claim of prosecutorial vindictiveness, the court will order unredacted portions
19 to be provided to defense counsel. These documents should be provided to the court in
20 advance of the March 18, 2019 pretrial hearing.

21
22 Dated this 6th day of March, 2019.

23 

Judge Pro Tem Catherine M. McDowall