

The Honorable Nelson K. H. Lee
Hearing Date: July 2, 2020 at 1 pm

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STATE OF WASHINGTON

SW No. 20-0-616926

COUNTY OF KING

**NEWS MEDIA OBJECTIONS AND
REQUEST TO QUASH
PURPORTED SUBPOENA FOR
PROTECTED NEWSGATHERING
MATERIAL**

I. INTRODUCTION AND RELIEF REQUESTED

Pursuant to CR 45(c) and Washington’s journalist shield law, RCW 5.68.010, the Seattle Times Co. (“Times”), Sinclair Media of Seattle, LLC (“KOMO-4”), KING Broadcasting Company (“KING-5”), KIRO TV, Inc. (“KIRO-7”) and Fox Television Stations, LLC (“KCPQ-13”) (collectively, “News Media”) object to the subpoena the Seattle Police Department (“SPD”) purports to request in this matter (“Subpoena”). The Court should enter an order holding that the Subpoena is unenforceable.¹

The Subpoena is a procedurally irregular, overbroad and impermissible assault on the independence of the press. SPD, acting through outside counsel, has targeted Seattle’s five largest news outlets with an expansive demand for vast amounts of unaired news footage and unpublished news photographs. The demand is not limited to evidence of the single unsolved crime alleged in its supporting affidavit; instead, it seeks **all** images from 90 minutes of protests across four city blocks.

¹ The Subpoena misidentifies the entities that operate KING-5 and KCPQ-13. The correct entities are as set forth above.

1 SPD's fishing expedition disregards procedural safeguards that must be followed when
2 seeking evidence from news outlets. *See* Section V.A, *infra*.

3 The Subpoena also violates the constitutional and statutory privileges against compelled
4 disclosure of journalistic work product, particularly unpublished material. Both the First
5 Amendment and RCW 5.68.010 protect the news media from such compelled disclosure, largely
6 so that journalists are not perceived as arms of governmental investigators:

7 [C]ompelled disclosure of non-confidential information harms the press'
8 ability to gather information by . . . "converting the press in the public's
9 mind into an investigative arm of prosecutors and the courts. . . . **If**
10 **perceived as an adjunct of the police** or of the courts, journalists might
11 well be shunned by persons who might otherwise give them information
without a promise of confidentiality, barred from meetings which they
would otherwise be free to attend and to describe, or **even physically**
harassed if, for example, observed taking notes or photographs at a
public rally."

12 *Shoen v. Shoen*, 5 F.3d 1289, 1295 (9th Cir. 1993) (*Shoen I*), quoting Morse & Zucker, *The*
13 *Journalist's Privilege in Testimonial Privileges* 474–75 (1983) (emphasis added). This risk of
14 distrust and physical harassment has been witnessed by local reporters covering the recent
15 protests in Seattle, and would be aggravated if SPD is allowed to enforce this Subpoena.

16 Under the shield statute, journalistic work product is privileged absent "clear and
17 convincing evidence" that the information is "highly material and relevant" and is "critical or
18 necessary" to a claim; that the party has "exhausted all reasonable and available means to obtain
19 it from alternative sources"; and that "[t]here is a compelling public interest in the disclosure."
20 RCW 5.68.010(2). SPD cannot meet this burden here. The heightened relevance burden cannot
21 be satisfied by mere speculation, which is all SPD offers in its affidavit supporting the Subpoena.
22 Nor has SPD demonstrated that it has exhausted other sources of information, such as publicly
23 available social media images depicting this heavily recorded event. The Subpoena also is
24 contrary to the public interest, because – particularly in the context of news coverage of civil
25 unrest – requiring news outlets to hand over to police images of protesters imperils journalists
26 and impedes their ability to inform the public about such events. *See* Section V.B, *infra*.

1 Finally, the Subpoena is unduly burdensome and overly broad, which is a sufficient basis
2 for the Court to decline to enforce it under CR 45. *See* Section V.C, *infra*.

3 II. STATEMENT OF FACTS

4 This matter is pending under a search warrant cause number, SW No. 20-0-61692-6.
5 Undersigned counsel for the News Media has been unable to access any filed document, view
6 any publicly available docket information, or file a Notice of Appearance.

7 According to documents SPD provided to each of the News Media parties, SPD
8 submitted to the Court an “Affidavit for Subpoena” (“Aff.”) in this matter on June 18, 2020. The
9 document asks the Court to “issue a subpoena duces tecum according to the procedure set forth
10 in CrR 2.3(f) and RCW 10.79.015(3),” and to set a hearing where the named “media outlets will
11 then have an opportunity to respond to the subpoena and have the Court rule on any objections.”
12 Judge Oishi apparently signed the request on June 18, 2020.²

13 The affidavit states that SPD seeks unpublished and unaired news images primarily to
14 locate two individuals – a man in a distinctive “red colored Adidas brand sweat suit” and a
15 female wearing a “black and white striped bandana,” *See* Aff at 11, 14. The affidavit refers to
16 the female as “unidentified” multiple times (*id.* at 7, 8, 9) before disclosing that she was in fact
17 taken into custody and charged a week before SPD requested the Subpoena. *Id.* at 15. The
18 affidavit states that both the male and female suspects are “very easy to track based upon their
19 clothing and actions during the civil unrest.” *Id.*

20 The requested Subpoena, however, seeks information far beyond these two individuals.
21 It demands **all** news footage for an extended period, at the epicenter of a period of both
22 demonstrations and civil unrest. The Subpoena demands:

23 Any and all video footage or photographs, including but not limited to all
24 unedited and/or raw video footage, taken on Saturday, May 30, 2020, from
25 1530 hours to 1700 hours from the locations of Olive Street to Pike Street
and also from 6th Avenue to 4th Avenue in Seattle, Washington.

26 _____
27 ² The hearing set by Judge Oishi was initially set for June 29. This Court subsequently
rescheduled the hearing for July 2.

1 SPD subsequently served the Subpoena on each of the Times, KOMO-4, KING-5, KIRO-
2 7 and KCPQ-13, captioned as a “Subpoena Duces Tecum ... Pursuant to CrR 2.3(f) and RCW
3 10.79.015(3).” The Subpoena fails to provide any place, date or time for compliance.

4 III. ISSUES PRESENTED

5 1. Whether SPD is entitled to enforce a subpoena to news outlets, seeking
6 unpublished information gathered in the course of gathering and reporting the news, where the
7 subpoena fails to comply with CR 45.

8 2. Whether SPD has met its burden to show, by clear and convincing evidence, that
9 its subpoena to every major Seattle news organization, seeking information obtained in the
10 course of protected newsgathering activity, should not be quashed pursuant to RCW 5.68.010.

11 3. Whether SPD’s subpoena is overbroad or otherwise objectionable pursuant to
12 CR 45.

13 IV. EVIDENCE RELIED ON

14 The News Media rely on the Declaration of Danny Gawlowski (“Gawlowski Decl.”) (the
15 Times’ Assistant Managing Editor for photography), and on the filings in this matter.

16 V. LEGAL AUTHORITY AND ARGUMENT

17 A. SPD’s Attempt to Enforce the Subpoena Is Procedurally Improper.

18 As a threshold matter, any attempt to enforce the Subpoena at this stage would be
19 procedurally improper. As detailed below, the News Media must be provided the opportunity to
20 review and respond or object to the Subpoena as provided under **CR 45**; and any attempt to
21 enforce it must be pursuant to a motion to compel in an **action under the Civil Rules**, not in an
22 action docketed as a search warrant.

23 The requirement to proceed with a civil subpoena arises under RCW 10.79.015(3), which
24 states that if evidence of “any homicide or any felony” is sought “from any radio or television
25 station or from any regularly published newspaper, magazine or wire service, or from any
26 employee of [same], the evidence shall be secured **only through a subpoena duces tecum,**”
27 with limited exceptions that do not apply here. RCW 10.79.015(3) (emphasis added).

1 Enacted in 1980 (*see* 1980 c 52 § 1), RCW 10.79.015(3) is one of a number of similar
2 laws passed around the country to protect newsrooms from overreaching law enforcement
3 demands in the wake of *Zurcher v. Stanford Daily*, 436 U.S. 547, 567-68 (1978). The facts of
4 *Zurcher* are instructive. A demonstration at Stanford University led to a violent clash with
5 police, in which nine officers were injured. A newspaper ran articles about the incident. Local
6 law enforcement obtained a warrant to search the newspaper’s office for photographs or other
7 evidence that might reveal “the identity of the perpetrators” of the assaults. *Id.* at 550-51.
8 Although the Court concluded that the newspaper could not pursue a civil rights action based on
9 the search, it also found that “the Fourth Amendment does not prevent or advise against
10 legislative or executive efforts to establish nonconstitutional protections against possible abuses
11 of the search warrant procedure.” *Id.* at 567. Congress and a number of states, including
12 Washington, “accepted the invitation to establish such protections.” *J.O. v. Bedminster*, 77 A.3d
13 1242, 1245 (N.J. App. 2013) (citing RCW 10.79.015(3)).³

14 Like RCW 10.79.015(3), the Criminal Rules also require that demands for news material
15 must be made via a **civil subpoena**. Criminal Rule 2.3(f), “Searches of Media,” provides:

16 (1) *Scope*. If an application for a search warrant is governed by
17 RCW 10.79.015(3) . . . this section controls the procedure for
obtaining the evidence.

18 (2) *Subpoena Duces Tecum*. Except as provided in subsection (3)
19 [governing issuance of a search warrant], if the court determines that
20 the application satisfies the requirements for issuance of a warrant,
as provided in section (c) of this rule, **the court shall issue a
subpoena duces tecum in accordance with CR 45(b)**.

21 CrR 2.3(f) (emphasis added).

22 Accordingly, any attempt by SPD to obtain evidence from newspapers or television
23 stations must be made via a subpoena issued in accordance with CR 45(b). This assures that in
24 the face of any demand for compelled disclosure of journalistic work product, the press will have
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27 ³ Washington’s law has had its intended effect. It is rarely invoked, and has not been cited in
any published (or, for that matter, unpublished) appellate decision in its 40 years of existence.

1 an opportunity to review the request and, if it is objectionable, will have access to full judicial
2 review. CR 45(b) allows for this opportunity; a search warrant procedure does not.

3 SPD has failed to follow the requirements of CR 45. First, the Subpoena does not specify
4 “a time and place” for compliance, as required by CR45(a)(1)(C). This is not merely a formality.
5 A subpoena’s compliance time triggers the deadline for the recipient to serve objections.
6 CR 45(c)(2)(B). Timely objections shift the burden of enforcing the subpoena to the party
7 serving it, which cannot obtain the requested documents unless it brings a properly noticed
8 motion to compel under the Civil Rules. *Id.* SPD’s failure to provide a proper subpoena, but
9 instead to request that the Court immediately decide objections in a search warrant proceeding,
10 short-circuits this process. SPD should have provided the News Media an opportunity to review
11 and object to the Subpoena; and after reviewing and conferring over any such objections, it
12 would have been SPD’s burden to justify the Subpoena in a proper **civil** discovery motion.

13 SPD’s disregard of the CR 45 process also deprives the News Media of the usual route to
14 appellate review that attaches to efforts to enforce third-party subpoenas. A third party may
15 appeal an order in a civil action granting or denying a motion to enforce a subpoena. *Republic of*
16 *Kazakhstan v. Does 1-100*, 192 Wn. App. 773, 781, 368 P.3d 524 (2016) (nonparty appeal of
17 denial of motion to quash subpoena). In a search warrant action, it is unclear how, short of
18 seeking a writ of mandamus, the News Media would obtain such review.

19 Accordingly, the Court should take no action to enforce SPD’s Subpoena. Instead, the
20 Court should hold that it is not enforceable. If SPD still wishes to pursue the subpoena that it
21 requested from Judge Oishi on June 18, it should serve a subpoena that complies with CR 45,
22 and that follows its procedural safeguards, including by providing the News Media sufficient
23 time to review and object or respond.

1 **B. The Information Sought By the Subpoena Is Protected By the Shield Law,**
2 **the First Amendment, and the Common Law.**

3 Should the Court permit SPD to pursue the Subpoena at this time, it should hold that it is
4 unenforceable under the shield statute (RCW 5.68.010) and the constitutional and common law
5 protections against compelled disclosure of journalistic work product.

6 Reporter shield laws protect non-party news media against compelled disclosure of
7 information acquired in the course of newsgathering activities. “Rooted in the First Amendment,
8 the privilege is a recognition that society’s interest in protecting the integrity of the
9 newsgathering process, and in ensuring the free flow of information to the public, is an interest
10 of sufficient social importance to justify some incidental sacrifice of sources of facts needed in
11 the administration of justice.” *Shoen I*, 5 F.3d at 1292 (internal quotation marks omitted).
12 Compelling the news media to produce unpublished news footage and images poses many
13 dangers to journalists’ autonomy, including:

- 14 • the threat of judicial intrusion into the newsgathering and editorial process;
- 15 • the disincentive to compile and preserve unpublished material if that material is
16 subject to disclosure;
- 17 • the burden on journalists’ time and resources in responding to subpoenas; and
- 18 • the perception that the journalist is an investigative arm of the judicial system or a
19 litigant.

20 *Id.* at 1294-95; *Miller v. Superior Court of San Joaquin Cty.*, 21 Cal.4th 883, 886, 986 P.2d 170
21 (1999) (threat to press autonomy from subpoenas “is particularly clear in light of the press’s
22 unique role in society. . . . Because journalists not only gather a great deal of information, but
23 publicly identify themselves as possessing it, they are especially prone to be called upon by
24 litigants seeking to minimize the costs of obtaining needed information.”) (internal quotations
25 omitted).

26 Washington courts have long recognized the reporter’s privilege as a matter of both
27 constitutional and common law. *See e.g., State v. Rinaldo*, 102 Wn.2d 749, 689 P.2d 392 (1984);

1 *Senear v. Daily Journal-American*, 97 Wn.2d 148, 641 P.2d 1180 (1982); *Clampitt v. Thurston*
2 *County*, 98 Wn.2d 638, 658 P.2d 641 (1983).

3 In 2007, the Legislature codified the shield privilege as RCW 5.68.010. The statute
4 provides an unequivocal privilege to the “news media,” defined in relevant part to include any
5 newspaper or television station in the regular business of gathering and disseminating news or
6 information to the public by broadcast, and their employees who obtain or prepare news or
7 information in the scope of employment. RCW 5.68.010(5)(a), (b). The News Media entities
8 plainly meet this definition; indeed, SPD cites their extensive news coverage of the events of
9 May 30 as the very reason it seeks the Subpoena. *See Aff.* at 14, 15.

10 The statute provides an absolute privilege against disclosure of confidential news sources.
11 RCW 5.68.010(1)(a). In all other situations, the statute provides qualified protection against
12 subpoenas that compel the news media to “produce” or otherwise disclose **any** information
13 obtained in the course of “gathering, receiving, or processing news or information for potential
14 communication to the public.” RCW 5.68.010(1)(b). Here, the Subpoena falls within this broad
15 scope of the shield law. It seeks to compel the News Media to produce all “raw/unedited” video
16 and images taken by journalists from the demonstrations and unrest downtown on May 30.

17 To compel the media to disclose any information arising from its newsgathering
18 activities, the party seeking the information must establish each of following elements by “clear
19 and convincing evidence.” RCW 5.68.010(2). First, the information must be not merely
20 relevant but both “highly material and relevant” to the matter at hand and “critical or necessary
21 to the maintenance of a party’s claim, defense, or proof of an issue material thereto.” RCW
22 5.68.010(2)(b)(i), (ii). Second, the party seeking the information must show it “has exhausted all
23 reasonable and available means to obtain it from alternative sources.” RCW 5.68.010(2)(b)(iii);
24 Finally, the party seeking the information must show that “[t]here is a compelling public interest
25 in the disclosure.” RCW 5.68.010(2)(b)(iv). SPD cannot show these elements, much less by
26 clear and convincing evidence.

1 **1. SPD Has Failed To Provide Clear and Convincing Evidence of**
2 **Heightened Relevance or Critical Need for the Requested Information**

3 SPD has not shown that the material demanded in the Subpoena is both “highly material
4 and relevant” and “critical or necessary” to any prosecution. RCW 5.68.010(2)(b). To satisfy
5 these standards, SPD must establish, by clear and convincing evidence, that its case “virtually
6 rises or falls with the admission or exclusion” of the evidence sought from the press. *In re*
7 *Application to Quash Subpoena to Nat'l Broad. Co.*, 79 F.3d 346, 351 (2d Cir. 1996)
8 (interpreting shield law similar to RCW 5.68.010) (internal quotations omitted). Moreover,
9 “there must be a **showing of actual relevance**; a showing of potential relevance will not
10 suffice.” *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995) (“*Shoen II*”) (emphasis added).

11 This heightened relevance standard requires more than just an assertion that a fishing
12 expedition of unaired news footage **might** lead to something relevant. In *United States v.*
13 *Thompson*, 2015 WL 1608462, at *2 (S.D. Fla. Apr. 10, 2015), for example, a criminal defendant
14 sought to subpoena a news crew’s footage of his arrest, arguing it would disprove probable
15 cause. The court quashed the subpoena, finding the assertion insufficient to breach the
16 journalist’s privilege because it was “speculative – whether or not the footage actually shows this
17 information appears to be pure conjecture and merely exploratory at this point. Without more of
18 a showing, the Court cannot conclude that this footage is necessarily ‘highly relevant’.” *Id.*

19 Another court applying the heightened relevance element held an “open ended request for
20 unaired video footage that has nothing to do with [the party in question] fail[s] to make the
21 requisite showing. . . . **Speculating about possible relevance, rather than showing actual**
22 **relevance, is not enough to compel journalists to empty their newsroom files.”** *Flynn v.*
23 *Roanoke Companies Grp.*, 2007 WL 4564113, at *3 (N.D. Ga. Dec. 21, 2007) (emphasis added).

24 Like the party issuing the subpoena in *Flynn*, SPD “cannot, and does not, explain why
25 every piece of unaired footage is either relevant or [] necessary.” *Id.* Indeed, SPD’s supporting
26 affidavit shows **no** basis for it to assert that the unpublished information it seeks will provide any
27 clearer image of the one at-large suspect it seeks to identify, or any better evidence of the

1 felonies it claims to be investigating, than the numerous published images it already possesses.
2 At best, SPD **speculates** that forcing every major newsroom in town to empty its files of all
3 unpublished material **might** lead to something useful. That is insufficient as a matter of law to
4 show that its Subpoena seeks “highly material and relevant” and “critical or necessary”
5 information.

6 **2. SPD Has Not Presented Clear and Convincing Evidence That It Has**
7 **Exhausted Alternative Sources**

8 SPD also fails to meet its burden to show it “has exhausted all reasonable and available
9 means to obtain [the information] from alternative sources.” RCW 5.68.010(2)(b)(iii). A party’s
10 burden to exhaust alternatives sources is “very substantial.” *Clampitt*, 98 Wn.2d at 644.
11 “[C]ourts should do their utmost to avoid the need for reporter disclosure, ordering it only as a
12 last resort” and only after “the court is absolutely convinced” that the privilege has been
13 overcome. *Id.* at 643. *See also Schoen I*, 5 F.3d at 1295 (refusing to compel book author to
14 testify because plaintiffs had not deposed defendant about statements he made to author)

15 Here, SPD has not shown that it has done its utmost to avoid seeking unpublished news
16 material. It asserts that it “has been reviewing” surveillance footage from nearby businesses.
17 Aff. at 15. But there is no indication SPD has exhausted that process. Nor has SPD suggested it
18 has exhausted other sources of images, such as publicly available social media posts from the
19 heavily-recorded events of May 30. SPD’s supporting affidavit fails to state whether it has
20 publicized the images it already possesses to seek the public’s help in identifying the one at-large
21 suspect. Nor has SPD indicated whether it has completed its interviews of the many witnesses to
22 the events described in its supporting affidavit. In short, SPD has not satisfied its burden, much
23 less by clear and convincing evidence, that it exhausted every available source of the information
24 it seeks before it made its demand to the News Media.

1 **3. The Public Interest, Particularly in Protecting Journalists Who Cover**
2 **Civil Unrest, Requires Enforcing the Privilege.**

3 SPD also fails to meet the final element of the shield statute: it has not shown clear and
4 convincing evidence of “a compelling public interest” in requiring disclosure of the requested
5 unpublished news materials. RCW 5.68.010(2)(b)(iv). To the contrary, its Subpoena
6 undermines the public interest in assuring that journalists can safely and effectively report on
7 events like those that unfolded in Seattle on and after May 30.

8 The Legislature has made clear that the public interest supports protecting non-party
9 news media from subpoenas in all but the most exceptional cases. These public interests include
10 protecting journalists from “the disadvantage of . . . appearing to be an investigative arm of the
11 judicial system or a research tool of government.” *Shoen I*, 5 F.3d at 1294-95 (citation omitted).
12 Permitting the press to be seen as an adjunct of the police interferes with its ability to report
13 accurate information to the public. It fosters distrust among potential sources and can lead to
14 journalists being “physically harassed” when covering public gatherings *Id.* at 1295.

15 These are not idle concerns. Reporters who collaborate with law enforcement have been
16 the target of vandalism and harassment.⁴ But even the **perception** that journalists operate as
17 arms of the police poses a risk to journalists – a risk that, in the specific context of covering
18 protests and civil unrests, includes a danger of physical harm. *See* Gawlowski Decl. ¶ 6. The
19 News Media encountered these risks over and over again covering the events on and after May
20 30. One news photographer was hit in the head with a rock thrown by protesters, and later
21 punched in the face by a protester. *See id.* ¶ 7. Other journalists were told by demonstrators that
22 they did not want their photographs taken because they feared identification or police retaliation
23 if they were recorded. *Id.* At least one news station hired a private security contractor to protect
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⁴ *See, e.g.*, “Olympian newspaper disciplines photographer,” *Seattle Times* (July 12, 2011)
26 (after photojournalist shared unpublished photos of violent protesters with police, both his home
27 and newspaper’s office were vandalized), available at [https://www.seattletimes.com/seattle-
news/olympian-newspaper-disciplines-photographer/](https://www.seattletimes.com/seattle-news/olympian-newspaper-disciplines-photographer/).

1 its news crew. Aff. at 4. Journalists faced numerous incidents of protesters attempting to block
2 cameras or interfere with their ability to provide news coverage.⁵

3 Similarly, in covering the “Capitol Hill Occupied Protest,” journalists have had to explain
4 repeatedly that they are independent from the police, and that journalists do not serve as an
5 extension of law enforcement. Gawlowski Decl. ¶ 8. These assurances are instrumental in
6 enabling journalists to gain trust with protesters so that they can safely and accurately report
7 news from the protest zone. *Id.* The perception that the News Media is cooperating with police
8 investigations would subvert that effort, degrade trust in journalists, and undermine their ability
9 to inform the public. *Id.*

10 In sum, SPD cannot show by clear and convincing evidence that enforcing the Subpoena
11 is the public interest. The Subpoena poses a substantial risk both to the physical safety of
12 journalists, and to their ability to inform the public effectively. *Id.* ¶ 9.

13 **C. The Subpoena Is Overbroad and Unduly Burdensome**

14 In addition to being contrary to the shield law, the subpoena should be quashed for a
15 more basic reason: it is flagrantly overbroad and would subject the News Media to an undue
16 burden. CR 26(c); *Jimenez v. City of Chicago*, 733 F. Supp. 2d 1268, 1273 (W.D. Wash. 2010)
17 (quashing subpoena as unduly burdensome, as well as violating the journalist’s privilege).

18 The Subpoena’s scope is overbroad. SPD’s affidavit focuses on two individuals, readily
19 identifiable by their clothing – one of whom is already in custody. *See* Aff. at 11, 14, 15. Yet
20 the Subpoena is not limited to these individuals, or even to individuals suspected of committing a
21 felony (as required to permit a news media subpoena under RCW 10.79.015(3)). Instead, the
22 Subpoena seeks **all** of the News Media’s footage and images, depicting thousands of individuals
23 attending a mass demonstration and its aftermath. No basis exists for SPD to demand that
24 journalists turn over material identifying individuals who are not even suspected of wrongdoing.

25
26
27 ⁵ One example of a news crew facing such harassment while broadcasting live can be seen at
3:00 to 3:30 in the news video at <https://twitter.com/johncolucci/status/1266918131529691137>.

1 Second, the Subpoena seeks a vast amount of footage and images from **dozens** of
2 individual journalists. *See* Gawlowski Decl. ¶ 5 (noting the Times alone had 15 journalists
3 covering the events). Responding to the Subpoena would be exceedingly disruptive and
4 burdensome to Seattle’s five major newsrooms. It would interfere with regular news reporting –
5 a particular concern in light of diminished newsroom resources, increased workloads, and the
6 burdens of covering the ongoing COVID-19 pandemic – and would require each journalist to
7 search for images spread out across multiple platforms. *Id.* Identifying responsive material also
8 would require hours of time from editors and production staff. *Id.*

9 **VI. CONCLUSION**

10 The subpoena is procedurally improper under CR 45. It seeks information privileged
11 under RCW 5.68.010, and SPD has failed to meet its burden of showing, by clear and convincing
12 evidence, that the shield law’s protections do not apply. It also is unduly burdensome. For all of
13 these reasons, the Court should enter an order holding that the Subpoena is not enforceable.

14 -----

15 I certify that this memorandum contains 4,123 words, in compliance with the Local Civil
16 Rules.

17 DATED this 29th day of June, 2020.

18 Davis Wright Tremaine LLP
19 Attorneys for Seattle Times Co., Sinclair Media of
20 Seattle, LLC, KING Broadcasting Company, KIRO
TV, Inc. and Fox Television Stations, LLC

21
22 By Eric M. Stahl
Eric M. Stahl, WSBA #27619

1 **DECLARATION OF SERVICE**

2 The undersigned, hereby declares under the laws of the State of Washington, that on this
3 day he caused to be served, a copy of the foregoing document on the following counsel of record
4 in the manner indicated:

5 Brian W. Esler [] Via First Class Mail
6 Miller Nash Graham & Dunn LLP [] Via Overnight Mail
7 Pier 70, 2801 Alaskan Way, Suite 300 [X] Via Email
8 Seattle, WA 98121-1128 [] Via Messenger
9 brian.esler@millernash.com

10 DATED this 29th day of June, 2020, at Seattle, Washington.

11 /s/Eric M. Stahl
12 Eric M. Stahl, WSBA #27619