

September 12, 2023

Court of Appeals, Division Three
500 North Cedar Street
Spokane, Washington 99201

Re: *Letter of Spokane County Prosecuting Attorney's Office*

Dear Judges of the Court of Appeals, Division Three:

I write in response to the improper efforts of the Spokane County Prosecuting Attorney to disqualify Judge George Fearing from a large percentage of this Court's cases. I urge Judge Fearing and the other members of this Court to reject the prosecutor's efforts to reshape the court and muffle those who speak against racism. The letter is nothing short of an attack on the independence of the judiciary.

The prosecutor insists Judge Fearing's recent opinion in *State v. Vaile* demonstrates improper bias towards the prosecutor and police. The prosecutor grounds his claim on what he describes as "[b]aseless accusations of racism and bigotry." p2. A review of the facts in *Vaile* and the response of both law enforcement and the prosecution demonstrate the court's recognition of the racism and bigotry at play are well founded.

No person could read the facts and argument outlined in Mr. Vaile's briefing without concluding race was *a*, if not *the*, motivating factor in the police response in his case. Even the majority opinion understood that. For the prosecutor's office to now pretend race "was not presented" is ridiculous. And that willful ignorance of the role race played in this case, and so many others, underscores the legitimacy of Judge Fearing's criticisms. We cannot know what we refuse to see.

History has shown time and again that racism thrives when there is hesitancy to address it. The prosecutor's letter is a barely veiled invitation to do more than hesitate. It is nothing more than a threat to the independence of the judiciary.

Identifying racism where it is evident to all is not a reflection of bias against those who refuse to see it or who would perpetuate it. The judges who saw the clear racism in the schools of Topeka, Kansas were not biased against the school district and taxpayers

of that city. They answered the calling of their position. The Spokane County Prosecuting Attorney would disagree.

The prosecutor's office's professed commitment to addressing racism is hollow when they will attack those who identify it. It is toothless if they will seek to disqualify a judge who would name it and hold them to account. Identifying racism is not a reflection of bias. Our Supreme Court has made clear it is a fundamental charge of all involved in the justice system.

Even if reasonable minds could disagree about the impact of race in a given case, and *Vaile* is not such a case, that disagreement is not a reflection of bias. If it were, the Spokane County Prosecuting Attorney's divergent view of *Vaile* would itself suggest a need for his office to recuse itself from any case involving a Black man.

The prosecuting attorney's letter is more than just an unfounded attack on Judge Fearing's fitness to serve as a judge. The prosecutor's letter is a shot across the bow to the judiciary at-large. The Spokane County Prosecuting Attorney has made clear he will not tolerate even the suggestion that racism exists in the Spokane County law enforcement community. The letter demonstrates that office will seek a compliant judiciary even following a case in which few could doubt the role racism played. This Court should not tolerate the threat to its independence.

The attorneys in my office have 320 years of combined experience representing people in appeals of their criminal convictions including cases before this Court. We have never seen so blatant an attempt by one litigant to silence those who would disagree with them. Each of the attorneys in my office could point to cases in which we believe the court's opinions were wrong, and the representation of the facts incorrect. But despite those instances, we have never sought the wholesale disqualification of a judge. Because it would be improper to do so. It is particularly troubling where the effort is made by a representative of the State of Washington and where it is a transparent effort to silence criticism of racist outcomes. I urge this Court to refuse to permit this blatant attempt to tip the scales.

The people of this State choose who will decide cases as judges, not the interested litigants. What hope does it leave individuals who would challenge the impact of race in their Spokane County conviction in future appeals to know of past and presumably ongoing efforts of law enforcement to improperly influence those who will decide their cause?

I urge Judge Fearing, and all the members of this Court, to resoundingly reject the prosecutor's effort to reshape the Court.

Respectfully,

Gregory C. Link
Director/Attorney at Law

cc: Chief Justice Steven C. Gonzalez