NO. 10-J-701053
12-J-700320
12-J-700321

JEFFERSON DISTRICT COURT

JUVENILE DIVISION

IN RE: THE INTEREST OF: S.D., A CHILD
W. F., A CHILD
A. Z., A CHILD

ORDER

*** *** ***

IT IS HEREBY ORDERED that the Jefferson Circuit Court having entered an Order dismissing the Appeal in the abovestyled cases, this Court's Opinion of August 28, 2012, to open the files in these cases is hereby effective on August 30, 2012, at 1:30 p.m.

Entered this 30 day August, 2012.

ANGELA MCCORMICK BISIG
CHIEF JUDGE, JEFFERSON DISTRICT COURT

cc: Thomas C. Clay
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ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
AUG 30 2012
BY _____ DEPUTY CLERK

JEFFERSON CIRCUIT COURT
DIVISION ___
CASE NO. _____

ON APPEAL FROM JEFFERSON DISTRICT COURT
JUVENILE DIVISION EIGHTY-EIGHT (88)
HON. ANGELA McCORMICK BISIG, CHIEF JUDGE
CASE NO. 12-J-700321

IN RE W.F., A CHILD APPELLANT

ORDER DISMISSING APPEAL

Appellant W.F. has moved the Court to dismiss his appeal of the District Court's Opinion and Order entered on August 28, 2012, and the Court having reviewed this matter and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Appellant's Motion is GRANTED.

This _____ day of August, 2012.

Judge SENIOR JUDGE
Jefferson Circuit Court DIV. 10
8-30-12

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
AUG 30 2012
BY: DEPUTY CLERK

CASE NO. 12-J-700321

JEFFERSON DISTRICT COURT
JUVENILE DIVISION EIGHTY-EIGHT (88)
ANGELA McCORMICK BISIG, JUDGE

In re: W.F., a Child

NOTICE OF APPEAL

Notice is hereby given that W.F., juvenile defendant in this proceeding, hereby appeals to the Jefferson Circuit Court from the final and appealable order entered by this court on August 28, 2012.

The names of the appellees against whom this appeal is taken are S.D., a juvenile victim; the Commonwealth of Kentucky; and the Courier-Journal, Inc.

Respectfully submitted,

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Counsel for Appellant W.F.

CASE NO. 10-J-701053
12-J-700320
12-J-700321

JEFFERSON DISTRICT COURT
JUVENILE SESSION
JUDGE ANGELA MCCORMICK BISIG

IN THE MATTER OF: SD, A CHILD
WF, A CHILD
AZ, A CHILD

ORDER

** *** ** **

IT IS HEREBY ORDERED that the Jefferson Circuit Court Clerk is to maintain the Court files and record in the above-styled action confidential for 24 hours (3:00 p.m. August 29, 2012) in order to allow the parties to the action to respond to this Court's August 28, 2012 Opinion and Order.

ANGELA MCCORMICK BISIG, CHIEF JUDGE
JEFFERSON DISTRICT COURT

DATE: 8/28/12

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
AUG 28 2012
BY DEPUTY CLERK

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CM

NO. 10-J-701053
12-J-700320
12-J-700321

JEFFERSON DISTRICT COURT

JUVENILE DIVISION

IN RE: THE INTEREST OF: SAVANNAH DIETRICH, A CHILD
WILLIAM FREY III, A CHILD
AUSTIN ZEHNDER, A CHILD

OPINION AND ORDER

*** *** ***

This matter comes before the Court on the Motion of The Courier-Journal, Inc. (hereinafter referred to as: "Courier-Journal") to intervene in the above styled cases. The Courier-Journal has also moved the Court to release records relating to a now withdrawn contempt charge against Savannah Dietrich (hereinafter referred to as: "Dietrich") as well as the entire court record relating to criminal charges brought against the two juvenile Defendants, William Frey, III (hereinafter referred to as: "Frey") and Austin Zehnder (hereinafter referred to as: "Zehnder"). The Defendants pled guilty to the charges of Sexual Abuse I and Voyeurism on June 26, 2012. The cases are set for a dispositional hearing (referred to as sentencing in adult court) on September 14, 2012.

BACKGROUND

The facts in this matter involve Frey and Zehnder attending a gathering at the home of Dietrich on or about dates between August 11, 2011, and August 31, 2011. All of the youths consumed alcohol. Dietrich passed out, and Frey and Zehnder penetrated her vagina with their fingers and took pictures with their cell phones. The victim did not give consent. The police were contacted and brought charges against the Defendants. They were arraigned in Juvenile Court, Division 88, on March 16, 2012, where they entered pleas of not guilty and were placed

5

on House Arrest with Home Supervision. The Defendants were allowed a release with supervision for a previously scheduled college visit.

There were four separate pretrial conferences where the parties and counsel discussed the case. The Defendants remained on House Arrest with Home Supervision. The County Attorney's Office assigned a victim advocate to Dictrich and her family. During this time frame, the police ordered forensic testing of the Defendants' cell phones. On June 26, 2012, the Defendants reached an agreement with the Prosecution whereby both juveniles entered pleas of guilt to Sex Abuse I and Voyeurism, the offenses as charged without amendment. There was also a typed proposed disposition presented to the Court.

This case, as in all cases involving a plea to a sexual offense, was passed seven weeks for a dispositional hearing pursuant to KRS 635.505. This statute requires a sexual offender risk assessment. The assessment is conducted to assist the Court in determining the youth's risk level for reoffending, as well as providing recommendations for treatment. The Department of Juvenile Justice also must prepare a predisposition investigation report for each Defendant. This report includes a school history, mental and physical health examination, study of family functioning and treatment recommendations. Accordingly, Judge Dee McDonald (the other Judge currently assigned to the juvenile division of District Court, Division 99, and covering court that day) passed the case to August 21, 2012. Upon request of the attorneys for the Defendants, Judge McDonald admonished all parties present of the confidentiality requirements of juvenile court.

On June 27, 2012, the attorneys for Frey and Zehnder made a motion in Division 88 to hold Dietrich in contempt of court for violating the law of confidentiality by allegedly posting comments about what her attackers had done and their names on a Twitter account. This Court

heard the motion. The Prosecutor and the Attorneys for the Defendants gave the Court information regarding the events of the preceding day. Dietrich and her parents were not present; therefore, the Court appointed the Louisville Metro Public Defender to appear with and represent Dietrich. Dietrich's parents were notified, and the matter was passed for a hearing June 28, 2012. At the hearing on June 28th, the case was again passed at Dietrich's Public Defender's request in order to review the court tape of the prior proceedings.

On July 5, 2012, Dietrich's Public Defender made a motion to the Supreme Court of Kentucky to disqualify Judge Bisig from the case. This motion was based upon several grounds including: 1) Upon making their motion for contempt, the counsel presented a dialogue in open court about what had transpired the day Judge McDonald took the pleas; 2) Judge Bisig had called some of the facts of the case "allegations" in an on-the-record discourse with the victim explaining what was happening with the case after the pleas and recommended dispositions; 3) The detention worker in charge of the Home Supervision program gave approval for the Defendants to attend their prom contrary to the Court's Order of House Arrest. Dietrich's Public Defender also filed a motion to dismiss the contempt charge. These motions were all passed for response.

On July 6, 2012, although stating on the record she believed there was no basis to disqualify her from the case, in an effort to allow the parties to be heard expeditiously, this Court stepped aside to allow Judge McDonald to hear the contempt motion. It was Judge McDonald who accepted the Defendants' pleas and admonished the parties regarding the confidentiality of juvenile court. (On July 13, 2012, the Kentucky Supreme Court entered a written ruling that there was not a basis to disqualify Judge Bisig from hearing the case.)

It was at this point that information regarding the Defendants' pleas of guilt and the motion for contempt against Dietrich were leaked to the media. There was significant public outrage at reports that a sexual assault victim could face sanctions. This generated substantial media attention in this case. Dietrich's Public Defender requested to have the hearing involving the contempt motion opened to the public and to the local paper, the Courier-Journal. Dietrich's Public Defender also tendered a signed waiver of her confidentiality for the media to cover the hearing. On July 9, 2012, the Courier-Journal also moved the Court to intervene in the case, to open the contempt hearing, and to lift restrictions on the parties' freedom of speech. Dietrich's Public Defender also filed a motion to lift a "gag order" on the victim. On July 23, 2012, a joint motion was filed by the Defendants to withdraw the contempt motion. Judge McDonald sustained the motion to withdraw.

The Courier-Journal then moved for access to the juvenile records of Frey and Zehnder. On July 26, 2012, private counsel entered and appearance for Dietrich. On July 27, 2012, Dietrich's Attorney made a motion to recuse the Prosecutor and the County Attorney's Office from the case. Faced with the motions outlined above, and the contempt charge being withdrawn, on July 30, 2012, Judge McDonald entered a written Order reassigning the case to Division 88 (Bisig). Judge McDonald further ruled in her Order that she would grant a motion allowing the proceedings to be open if there was a tendered agreement by all parties, parents and counsel to open the file. Judge McDonald ruled that there was no "gag order" in place and that her admonishment had been to comply with the law of confidentiality required by Kentucky Statutes. The Order also removed the Office of the Public Defender from the case, as Dietrich now had a private attorney. She passed all remaining motions for a hearing. Since this date, the Defendants' attorneys also made a motion to strike the appearance of Dietrich's private attorney.

On August 21, 2012, all parties and all counsel appeared before this Court for a hearing on the Courier-Journal's motion to open the files of Dietrich, Frey and Zehnder. Each party also submitted Briefs. The Courier-Journal filed a motion to have the hearing concerning accessing the record open to the public. The Court denied this motion on the record stating: 1) To open the proceedings prior to argument was tantamount to deciding the access issue without the opportunity to hear arguments of counsel; 2) It would be difficult to properly argue the motions to open the files without mentioning confidential information. The parties each presented oral arguments regarding opening the juvenile files.

OPINION

The specific issues brought before the court are: a) Does the Courier-Journal have standing to intervene and move for access to the file; b) Under Kentucky law, does the Court have the authority to release the record of these juvenile proceedings; c) If the Court has the authority to open a juvenile record, does good cause exist to release the three files in this case.

I. Motion to intervene/standing

The parties have acknowledged in open court that the Courier-Journal's motion to intervene must be addressed prior to an analysis of whether to open the record. It is worth noting that the Prosecutor had no objection to the motion, and there has not been significant objection raised in pleadings by the Defendants. In his response to the Courier-Journal's motion for access, the Attorney for Frey argues that the case of Courier-Journal & Louisville Times Co., v. Peers, Ky., 747 S.W.2d 125 (1988), deals with exclusively with Circuit Court civil cases. As this Court has ruled previously, Kentucky law recognizes that a member of the news media may intervene in a court action in order to demand access to court proceedings or records. Courier-Journal & Louisville Times Co. v. Peers, Ky., 747 S.W.2d 125, 127-8 (Ky., 1988). The

procedure set forth in Peers requires a motion to intervene, proper notice to the affected parties, and a request for a hearing. Id. at 30. The Kentucky Supreme Court reaffirmed Peers, supra, in Lexington Herald-Leader Co., Inc. v Meigs, 660 S.W. 2d 658 (Ky., 1983). Although this case is not a civil proceeding, the Court finds the procedural steps should outlined in Peers instructive. In this matter, the Courier-Journal has followed these steps. Based upon this reasoning, the Court will sustain the Courier-Journal's motion to intervene in this action for the purpose of its motion to access the files.

II. Confidentiality of Juvenile Court/Discretion to Release Juvenile Files

Under Kentucky Law, there are three statutes that provide guidance as to the confidentiality of juvenile court. These statutes deal with "Hearings" (KRS. 610.070), "Juvenile record and docket" (KRS 610.320), and "Juvenile court records" (KRS 610.340).

KRS 610.070

> (3) The general public shall be excluded and only the immediate families or guardians of the parties before the court, witnesses necessary for the prosecution and defense of the case, the probation worker with direct interest in the case, a representative from the Department of Juvenile Justice, the victim his parent or legal guardian, or if emancipated, his spouse, or a legal representative of either, such persons admitted as the judge shall find have a direct interest in the case or in the work of the court, and such other persons as agreed to by the child and his attorney may be admitted to the hearing. [Emphasis added]

KRS 610.340(1)(a)

> (a) Unless a specifie provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause. [Emphasis added]

KRS610.320(3)

(3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except that a separate public record shall be kept by the clerk of the court which shall be accessible to the public for court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is fourteen (14) years of age or older at the time of the commission of the offense, and who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed.

The above statutes outline the Kentucky Legislature's intent that cases involving juveniles be closed to the public. There is still little precedent regarding the opening of juvenile cases in this Commonwealth. In the 2008 matter of In re: Kenneth Eastridge, Case No. 96FJ-1963, this Court reviewed the statutes above and found that the legislature had left open a window of judicial discretion in the otherwise closed protection of juvenile proceedings. The Jefferson Circuit Court affirmed this Court's findings regarding the exception to the general veil of confidentiality. There is direct language in the statute allowing a court to authorize others to attend a juvenile proceeding when the court finds there is "good cause." KRS 610.340. There is also clear language creating an exception when the court determines that persons seeking to be admitted have "direct interest in the work of the court."KRS 610.070.

There is some guidance offered on this issue by federal courts. The United States Court of Appeals for the Sixth Circuit examined the Kentucky Statutes in question the case of Kentucky Press Ass'n v. Commonwealth of Kentucky, 454 F.3rd 505 (6th Cir. 2006). In that case, the Sixth Circuit considered a different issue than the one before this court. In Kentucky Press Ass'n, the Federal Court found a claim by the Press Association challenging the constitutionality of closed juvenile proceedings was not ripe. Id. 510. However, it is instructive

that in its reasoning the Sixth Circuit cites the same provisions of the Uniform Juvenile Code and opines, "that Kentucky Courts would deny the KPA the access it seeks is far from certain." Id. at 509. "The Kentucky courts could reasonably interpret these provisions to allow for limited access to juvenile proceedings by the media, which arguably has a "direct interest in the ...work of the court." Id. While this dictum is not binding precedent, it is clear that the court believed that current Kentucky law arguably allowed for a judicial determination concerning media access to juvenile court proceedings.

For these reasons, the court finds that the Kentucky Juvenile Code gives this Court the discretion to determine if good cause exists to open the court records involving Dietrich, Frey and Zehnder.

III. Good Cause Examination of these Facts

Public Confidence

Public confidence in government is perhaps the most critical in its institution of justice. Courts are established to enforce our laws and resolve disputes. The very idea that a young victim of a sexual assault would find the courage to tell her story and come to court, only to have no one listen to her, explain to her what is happening, and then to have the parties reach some type of deal without her input is abhorrent. The public would and should cry "foul." This type of allegation against the criminal justice system is serious and is impossible to address without reviewing what happened in this case. The community must have faith in its institution created to hold offenders accountable for wrongful deeds. Victims of sexual assaults should know that the criminal justice system is trained and equipped to handle their special needs.

It is not surprising that a minor child feeling she was subjected to this kind of treatment would cause the media to have great interest in the case. The protections outlined in the Juvenile

Court Statute are not a cloak to cover the activities of the judges, lawyers and court personal in the juvenile justice process. The purpose of confidentiality in juvenile proceedings is to encourage the reform of offending youth by keeping them from being forever identified by the offenses they committed prior to adulthood. F.T.P. v. Courier-Journal, 774 S.W.2d 444 (Ky.,1989). The intent section of the Unified Juvenile Code provides that juvenile proceedings should promote the best interests of the child by providing treatment and sanctions to reduce recidivism and assist in making a child become a productive citizen. KRS 600.010 (e). The news media represents the eyes and ears of the public and the Court must balance the public's right to know with the litigants' right to privacy. Peers, supra, 747 S.W.2d at 127. Opening the records concerning this incident would further the goal of public confidence in the justice system.

The victim requests the case be opened

A victim before the court who suffered an assault of a sexual nature is in a very sensitive and difficult situation. If Dietrich did not want this file to be open due to the nature of the assault and the underlying facts, this would weigh very heavily in the favor of maintaining the records' confidentiality. It was the Dietrich's Public Defender, contrary to that offices' general position to keep juvenile matters closed, who originally tendered a confidentiality waiver dated June 27, 2012. The Public Defender sought to open her contempt file and the information it contains about this case. It is also important to note that this request was also approved by her parents in writing. At the hearing on August 21, 2012, Dietrich's current private attorney also argued to open all three of the juvenile files. In analyzing the good cause exception contemplated by the Statute, the Court must take the crime victim's position into account and give it serious consideration. Here, the victim supports the Court opening the record.

The Prosecution has no objection to the case being open

The Jefferson County Attorney's Office stated several times during the oral arguments in court that they had no objection to the Courier-Journal's motion to open the files in these juvenile matters. As the entity charged with protecting our community and promoting offender accountability, if the office believed these goals would be somehow thwarted by the public release of the court files, one would think the Jefferson County Attorney would file motions seeking to have the confidentiality enforced with in this case. Instead, as the court considers the reasons underlying the good cause analysis, it has kept in mind that the County Attorney has no objection.

Confidentiality in the Computer/Internet Age

Since the Unified Juvenile Code was enacted in 1986, the landscape of information distribution has changed significantly. While all of the principles underlying the need for protection of juveniles have remained the same, the manner in which the public receives its information has changed greatly. In today's lightening fast world of immediate dissemination of news via the internet and social media, the concept that a matter can be reasonably kept secret from a community is more daunting. In this case, the story told by Dietrich reached a national and even global audience in a matter of days. This has cast an immediate and far reaching suspicion on the States' criminal justice system. All of the minors involved in this case– Dietrich, Frey and Zehnder-- have accused each other of posting comments about what happened on the internet.

As a result of so much information about the underlying incident being so quickly and widely distributed, it is considerably more difficult to find that the community has no interest in the conduct of this case. It is clear purview of the legislature, and not the courts, to address the

realism of confidentiality in a digital age. The Court must follow the law. However, the legislature in its wisdom did leave room for the courts to exercise discretion in considering the question of access to a court proceeding on a case by case basis. Here, the broad based community interest brought about by the rapid information age cannot be overlooked.

The Defendants/Best Interests

The overriding consideration for this court must be the best interests of the juveniles involved in the case. It is a most difficult and complex consideration when the juvenile Victim is advocating full disclosure and the juvenile Defendants are requesting the court maintain confidentiality. The two Defendants in this case were 16 years old at the time of the offenses. Neither have any prior violations of the law, and yet, they have pled guilty to serious acts against the Victim. Juvenile law requires that the court examine all issues with the interests of the minor children involved as the first priority.

Both Attorneys for Frey and Zehnder have filed briefs arguing the law requires these proceedings to remain confidential and that good cause does not exist in this case. The Defendants believe it is unfair to even consider releasing the record just because of all of the media attention. They also raise the issue that the case involving these minors is still ongoing, unlike the facts in Eastridge, where the file opened by the court involved a man who no longer needed the protection of a confidential proceeding. These arguments are persuasive in that the public's simple desire to know cannot be a sufficient reason to open a juvenile proceeding. These minor children are profoundly affected by this process, and it is this fact that weighs most heavily in favor of keeping the record confidential.

The Defendant's lawyers further believe that the victim's actions in talking about her experience brought about the need for explanation of the circumstances. Dietrich's lawyers

argue it was an attempt to hold their client in contempt that caused the intense public scrutiny. Whatever the root cause, the situation now has escalated because no one can discuss the decisions made in the case. It is unfortunate for all of the youth involved that they have been thrust into more protracted litigation than is found in a normal juvenile case. While Frey and Zehnder's counsel argue that disclosure will ruin their lives, it seems that the antiseptic of the truth and openness would benefit all of the parties to this matter. The adversarial system that is one of the foundations to our legal system can be fully realized. In the best interest analysis before this Court, there is more in favor of opening the record than the mere public's desire to know.

For all of these reasons, there is good cause contemplated under Kentucky law to review the record in this case. Therefore, the Courier-Journal's motion for access to the record is sustained. In light of the additional motions before this Court, and the pending dispositional hearing, the Court further holds that in order to insure proper decorum that only one camera will be allowed and no photographs or filming of the minors involved in these proceedings in the courtroom. No photographing any of the minor children involved in the courtroom environment or waiting area without the permission of the parties and their parents.

ORDER

Upon the motion of the Courier-Journal, Inc, to intervene in this case and be allowed access to the files relating to the cases of Dietrich, Frey and Zehender, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that the Courier-Journal is granted leave to intervene in this case. The Court further finds that there is good cause to provide access to the court records in this case, and the Courier-Journal's motion is GRANTED.

This is a final and appealable Order and there is no just cause for delay in its entry or execution.

Entered this 28 day August, 2012.

ANGELA MCCORMICK BISIG
CHIEF JUDGE, JEFFERSON DISTRICT COURT

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
AUG 28 2012
BY: DEPUTY CLERK

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CASE NO. **10-J-701053**
12-J-700320
12-J-700321

FILED IN CLERK'S OFF
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2012 AUG 22 P 3:53

BY

JEFFERSON DISTRICT COURT
JUVENILE SESSION
JUDGE ANGELA McCORMICK BISIG

IN THE MATTER OF:

SAVANNAH DIETRICH, et al

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
THE COURIER-JOURNAL'S MOTION FOR ACCESS TO COURT RECORDS

The Courier-Journal, Inc. (the "Couricr-Journal"), by counsel, hereby submits this supplemental memorandum in support of its motion for leave to intervene in this case and for access to the court records in this matter. This supplemental memorandum is submitted solely to inform the Court of actions that have oecurred after the August 21, 2012 hearing and which are relevant to thc pending motion.

On August 22, 2012, a news article was published in the online publication *The Huffington Post*. A copy of the article is attached as Exhibit 1. The article is entitled "Savannah Dictrich, 17-Year-Old Sexual Assault Victim, Ruined Attacker's Life, Lawyer Says." (Id.) The article contains numerous quotes from counsel for Dcfendant AZ. (See id.) Among other things, AZ's counsel publicly stated,

> He [AZ] has lost all the potential that was there. He was attending high school and was kicked out. Hc was on course to a scholarship to an Ivy League school to play sports and that may be jeopardized. He's in therapy. He's just overwhelmed and devastated by what started from the conduct of this young girl saying false things as shc did.

(Id. at 1.)

AZ's also is quoted as saying,

> The victim, in a fit of anger, tweets my client's name, calls him a rapist -- something he was never accused of – and said the court system was corrupt and he got away with what he did. ... She also said he videotaped her and put in on the internet. There never was a rape, there was no video and there was nothing on the Internet. But he did admit to the conduet as charged which was criminal sexual abuse or touching.

(Id. at 1.)

In addition to the numerous statements about the facts of the underlying case, AZ's counsel is quoted as saying that the real reason for the contempt motion filed in this case against Ms. Dieitrich was that "... we wanted our clients' names off the Internet and wanted her to know that what she was doing was wrong." (Id. at 1.)

All of these statements are attributed to AZ's counsel as part of an interview he gave to *The Huffington Post* with full knowledge and consent for the statements to be published. The Courier-Journal agrees that AZ and his counsel have the right to make public statements about such issues. Yet, in the August 21, 2012 hearing, AZ's counsel vehemently argued against the Courier-Journal's motion by repeatedly stating that he and his client have deliberately avoided making public statements about the facts of this case. Since AZ's counsel has put out his version of the facts, he should not be heard to complain about the public having access to all the facts in the court files.

In the hearing, AZ's counsel claimed that the confidentiality of juvenile court should prevail over the public interest in disclosure in this case, even in the face of unanswered public questions about the facts of the case and how the case was handled in the justice system. That argument is clearly wrong in light of the attached news article. AZ's counsel has made public statements about the facts of the underlying case, about how the case was handled, about the case's ramifications for AZ (such as being kicked out of school and seeking therapy), and about

the reasons for the contempt motion against Ms. Dietrich. The public statements made by counsel for AZ provide further "good cause" to release the court records in this case under KRS 610.340(1)(a) so that the public may make its own informed judgment. Accordingly, the Court should grant the Courier-Journal's motion to intervene and release the records.

CONCLUSION

For all the reasons set forth herein and in the Courier-Journal's previous memoranda, the Court should grant the Courier-Journal's motion and should release the court records.

Respectfully submitted,

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CASE NO. 10-J-701053
12-J-700320
12-J-700321

FILED IN OFFICE JEFFERSON CIRC. CT.
2012 AUG 15 P 3:17
BY

JEFFERSON DISTRICT COURT
JUVENILE SESSION
JUDGE ANGELA McCORMICK BISIG

IN THE MATTER OF:

SAVANNAH DIETRICH, et al

REPLY MEMORANDUM IN SUPPORT OF
THE COURIER-JOURNAL'S MOTION FOR ACCESS TO COURT RECORDS

The Courier-Journal, Inc. (the "Courier-Journal"), by counsel, hereby states as follows for its reply memorandum in support of its motion for leave to intervene in this case and for access to the court records in this matter.

I. THE COURIER-JOURNAL HAS STANDING TO INTERVENE.

There is no serious question that the Courier-Journal has standing to intervene in this action in order to seek aceess to court records. That is precisely what the Kentucky Supreme Court held in Courier-Journal & Louisville Times Co. v. Peers, 747 S.W.2d 125 (Ky. 1988), and that holding has been re-affirmed in numerous subsequent decisions. See, e.g., Riley v. Gibson, 338 S.W.3d 230, 234 (Ky. 2011); Cent. Ky. News-Journal v. George, 306 S.W.3d 41, 44 (Ky. 2010); Roman Catholic Diocese v. Noble, 92 S.W.3d 724, 728 (Ky. 2002).

Defendant "WF" claims that the holding in Peers deals exclusively with intervention by news media organizations in Circuit Court cases and does not apply to District Court juvenile cases. (WF Mem., p. 1, ¶ 1.) That claim is simply incorrect, and it is not supported by any authority or by any explanation. In fact, nothing in Peers or its progeny is unique to the Circuit Court setting or in any way excludes the ability to intervene in District Court cases. This Court is aware from the Eastridge case that the Courier-Journal's right to intervene in a District Court

juvenile case has been upheld. Moreover, in F.T.P. v. Courier-Journal, 774 S.W.2d 444, 445 (Ky. 1989), the Supreme Court specifically recognized that the Courier-Journal had appropriately intervened in an underlying juvenile court case to seek aeeess to court reeords and hearings.

Because the Courier-Journal has the well-established right to intervene in this case in order to seek access to court records, the Court should grant the Courier-Journal's motion.

II. THERE IS "GOOD CAUSE" TO GRANT ACCESS TO THE COURT RECORDS.

Both Defendants "AZ" and "WF" object to the release of any court records in this case. Yet, their written objections actually confirm that there is an abundance of "good cause" under KRS 610.340 for the release of court records in this case.

Both Defendants admit that this case has received substantial public attention and has garnered signficant public interest. Both Defendants also concede that serious public questions about this ease relate to the actions of the two elected judges involved in this case and the actions of prosecutors from the elected County Attorney's office. Both Defendants complain that those public questions derive from false information about this case that has been spread in the public domain. They suggest that the true history of this case shows that there should be no cause for any public concern. Thus, in reality, the Defendants make the same argument as the Courier-Journal. The critical difference is that the Defendants suggest that the public should simply accept *their* assurance that they are right, with no access to the court records, whereas the Courier-Journal correctly maintains that the court records themselves reveal what has happened in this case.

The Defendants claim that there is no need for transparency in this case because any questions that have been publicly raised about alleged wrongdoing are incorrect, they say. Yet,

the Defendants overlook the fact that the importance of transparency in the judiciary does not hinge on whether alleged wrongdoing within the judicial process can be proved or disproved. The Kentucky Supreme Court has held,

> The most important charaeteristics of the judiciary are integrity and credibility. Courtrooms are kept open not so that members of the public can expose wrongdoings; rather, they are open to allow the citizens to see for themselves how their laws are impartially applied. It is to the benefit of a free society that judicial proceedings be publicly conducted. Not only are all citizens to be treated equally under the law -- they must be able to see that they are equally treated in their courts.

Lexington Herald Leader Co. v. Tackett, 601 S.W.2d 905, 906-907 (Ky. 1980). Similarly, the U.S. Supreme Court has held,

> Peoplc in an open society do not demand infallibility from their institutions, but it is difficult for them to aecept what they are prohibited from observing. When a criminal trial is eonducted in the open, there is at least an opportunity both for understanding the system in general and its workings in a particular case.

Richmond Newspapers v. Va., 448 U.S. 555, 572 (1980). The fact that serious and legitimate questions have been raised about how the juvenilc justice system operated in this case provides more than sufficient good cause to open the court records. There is no other way for the public to exercise its legitimate and compelling need to understand the process.

In AZ's objection to the Courier-Journal's motion, he complains of several public communications that he claims are "breathtaking in their falsity." (AZ Mem., p. 4, ¶ 8.) Those include, "... that when this case was brought to juvenile court, the rape charge was reduced to sexual abuse; that before she returned to court, behind Dietrich's back, this court, the prosecutor and the defense lawyers devised a plea agreement allowing for some kind of illegal sentence of probation." (Id.) AZ goes on to quote Judge McDonald's July 30, 2012 Order for the assertion that "a great deal of misinformation has been disseminated to the public about this case, not the least of which is that a 'gag order' had bcen entered." (AZ Mem., p. 4, ¶¶ 8-9.)

Similarly, WF's written objection contains a lengthy recitation of the history of this case, with some exhibits concerning the effort to disqualify Judge Bisig and the allegations of Ms. Dietrich as to her treatment by prosecutors. WF argues that there is a great deal of misinformation about what happened in this case. He claims that the truth should satisfy all of the public questions about how the Court, the County Attorney's offiee, and the juvenile justice actually operated in this matter. WF's suggestion that *his version* of events should be accepted without question and without the need for the public to examine the actual records themselves is simply wrong. The truth about what happened in this ease is in the court reeords. There is good cause for the records to be released. KRS 610.340(1)(a).

Both AZ and WF attempt to distinguish the facts of the Eastridge case, in which this Court held that good cause existed to release the records. They point out that (1) this is not a homicide case, (2) AZ and WF are still under the age of 18, and (3) neither has committed a subsequent offense. Yet, the *relevant* facts here are the same as in Eastridge. Just as in Eastridge, serious issues have been raised in this case about the juvenile justice system and the official participants in the system. In fact, the public interest in this case is even greater than in Eastridge because this case concerns questions about the work of current public officials in the juvenile justice system and about infringement upon the participants' current constitutional rights of free speech.

Further, contrary to the Defendants' suggestion, the good cause that exists for opening the court records in this case was not somchow engineered by the Courier-Journal. Like the Eastridge case, this case has become far different from the "ordinary" juvenile court case, and there is good reason for the public attention it has received. As WF argues, "[t]his case took a turn for the unusual" when Judge McDonald made an oral order requiring confidentiality,

Dietrich was accused of contempt for tweeting about the case, and efforts were made to disqualify both Judge Bisig and the County Attorney's office. (WF Mem., p. 3, ¶4, *et seq.*) None of those issues was created by the Courier-Journal, and each of these issues concerns the actions, or alleged actions, of the public officials involved in the juvenile justice process in this case. As such, there is a strong public interest in determining and analyzing the truth of the matter. There is "good cause" to release the court records in this case under KRS 610.340(1)(a). Accordingly, the Court should grant the Courier-Journal's motion to intervene and release the records.

III. THE COURIER-JOURNAL SEEKS ACCESS TO THE COURT RECORDS FROM ALL THREE CASES.

In his objection to the Courier-Journal's motion, Defendant AZ incorrectly suggests that the Courier-Journal's motion deals only with the court records relating to the contempt accusation against Ms. Dietrich. AZ points out that the Courier-Journal's initial motion contained only the case number of Ms. Dietrich's contempt case and did not contain the case numbers of the cases dealing with the criminal charges brought against the two Defendants.

For purposes of procedural clarity, the Courier-Journal's July 26, 2012 motion is attached as Exhibit 1 and is hereby adopted in full as to all three cases. The motion made clear that the Courier-Journal seeks access to the court records from all three cases. The motion was initially filed only under the case number for Ms. Dietrich's contempt case because, at that time, the case numbers of the two underlying cases against Defendants AZ and WF had not been disclosed to the Courier-Journal or its counsel. On July 30, 2012, Judge McDondald issued an order under all three cases. This was the first time that the case numbers of the two cases against the Defendants were disclosed to the Courier-Journal or its counsel. Among other things, the July 30, 2012

Order recognized that the Courier-Journal's motion for access to court records concerns all three cases.

CONCLUSION

For all the reasons set forth herein and in the Courier-Journal's July 26, 2012 motion, there is abundant "good cause" to release the court records at issue in this case under KRS 610.340(1)(a). Accordingly, the Court should grant the Courier-Journal's motion and should release the court records.

Respectfully submitted,

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JEFFERSON DISTRICT COURT
JUVENILE DIVISION
DIVISION 88/99
JUDGE ANGELA MCCORMICK BISIG

IN THE INTEREST OF: AUSTIN ZEHNDER, A CHILD
WILLIAM FREY III, A CHILD

COMMONWEALTH'S SURREPLY TO MOTION TO DISQUALIFY JEFFERSON COUNTY ATTORNEY

"While the legislature has granted victims certain rights, KRS 421.500, this statute does not include the right to participate as a party in a criminal action." **Schroering v. McKinney, 906 S.W.2d 349, 350, (Ky. 1995).**

"Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial." KRS 421.576 (3).

* * * * * * * * * * * *

Comes the Commonwealth of Kentucky, by its counsel the Jefferson County Attorney (JCA), and for its surreply to Ms. Dietrich's motion to disqualify the Jefferson County Attorney's Office from further participation in the above styled actions, states as follows:

INTRODUCTION

Ms. Dietrich's lawyer's motion is deficient as a matter of law and should be summarily denied. Unfortunately, he continues to fail to grasp the ultimate legal shortcomings in his motion. However, the JCA agrees that Ms. Dietrich not only should have a chance to address this Court, but has a ***right*** to do so. Ms. Dietrich understandably wants to assert her rights as the victim of a crime. "[Ms. Dietrich] is simply asserting her rights as a victim of admitted sexual assaults by AZ and WF." Reply Page 7. Those rights, as cited by Ms. Dietrich are to "inform the court of the victim's position on the sentencing or release..." Reply Page 2 *quoting* KRS

421.520(3).

The JCA shares Ms. Dietrich's desire for her to make a victim impact statement pursuant to Kentucky's victims' rights statute. Like all crime victims, she must be allowed to share with this Court the emotional and physical impact that her abusers left on her life. Similarly, if she disagrees with the proposed disposition, she may share this with the court at disposition.

Ms. Dietrich's lawyer has elected to file a groundless motion to disqualify the entire office of the Jefferson County Attorney. He has insisted on an evidentiary hearing (that he is not entitled to) that cannot advance his client's interests because she is not a party.

ARGUMENT

As asserted in the previously filed response, Ms. Dietrich's motion to disqualify should be denied. As all crime victims do, Ms. Dietrich has the right to make a statement to this Court prior to the sentencing of the two young men who sexually abused her. Ms. Dietrich's rights have never been questioned. Certainly in every case, the JCA invites the input of crime victims, embraces the right of a crime victim to make a statement to the court, and encourages the court to consider victims' views prior to sentencing. Ms. Dietrich's reply, however, confuses her right to make a victim impact statement with her non-existent right to participate as a party in the proceeding. Ms. Dietrich's statutory rights as a crime victim do not give her standing to challenge the continued involvement of the JCA in these two cases. Because the issue of standing can be resolved on the pleadings, the JCA requests that this Court deny Ms. Dietrich's motion to disqualify without an evidentiary hearing, and to schedule a date for sentencing as soon as possible at which Ms. Dietrich can exercise her statutory rights.

Ms. Dietrich's Lawyer Confuses *Rights* with *Standing*.

While Ms. Dietrich is granted eertain rights and protections by Kentucky's crime victim statutes, shc lacks legal standing to seek disqualification. Kentucky case law on this issue is clear. Because Ms. Dietrich does not have the judicially recognizable interest in the case's outcome, reeognized by Kentucky Courts, the Court should deny her motion for lack of requisite standing.

In moving to disqualify the JCA, Ms. Dictrieh seeks to partieipate as a party in these two cases. The issue of crime victim participation in Kentucky has been resolved for more than 15 years: "[t]hc Commonwealth is the sole entity whieh has a judicially recognizable interest in thc prosecution of criminal cases." Schroering v. McKinney, 906 S.W.2d 349, 350 (Ky. 1995).

In Schroering, the widow of a deceased motorcyclist sought to ehallenge the disposition of the case against the reekless driver who killed her husband. She petitioned the Court of Appeals for a writ of mandamus compelling the trial court to set aside or revoke the defendant's shock probation. Id. The Court of Appeals ordered the trial court to reconsider its decision, and thc defendant and the trial court judge appealed, arguing that the surviving widow laeked standing to petition for the writ. Id. The widow argued that she had standing because "she is a victim of a crime as defined by KRS 421.500," and that she had the right to make a vietim impact statement pursuant to KRS 421.520. Id.

In deciding Schroering, the Kentucky Supreme Court clarified the limits of the crimc victims' rights statutes, holding that "McKinney as the surviving widow has a personal interest in thc outcome, however, she does not have standing." Id. The Court noted that the legislature had vested proseeuting authority with Commonwealth and County Attorneys, not with individual

crime victims. Id. (citing KRS 15.725(1)). As such, the only parties in the criminal case were the Commonwealth and the defendant. The Court addressed McKinney's argument directly: ***"[w]hile the legislature has granted victims certain rights, KRS 421.500, this statute does not include the right to participate as a party in a criminal action."*** **Id.**

In his reply, Ms. Dietrich's lawyer makes exactly the same flawed argument as Ms. McKinney in the Schroering case. Her attorney emphatieally asserts that, as the vietim of a crime, "*[s]he has rights!*" Reply page 2. Like McKinney, Ms. Dietrieh's lawyer has confused legal rights—those conferred upon her by KRS 421.500—with legal standing to participate in the case by seeking disqualification. Ms. Dietrich clearly has legal rights as a crime victim under KRS 421.500, and the JCA encourages her to exercise those rights. Ms. Dietrich's lawyer is simply incorreet, however, in asserting that he and his client have standing—**as non-parties**—to seek to disqualify the JCA from these proceedings. Their participation as parties is improper and specifically prohibited by the deeision in Schroering. As such, the efforts by Ms. Dietrich's lawyer to disqualify the JCA must yield to his client's statutory rights to address this Court with a victim impact statement.

An Evidentiary Hearing on Ms. Dietrich's Motion is Not Mandated, and This Court Can Easily Deny on the Pleadings.

One of the most troubling inaccuracies in his reply is Ms. Dietrich's lawyer's apparent obsession with an evidentiary hearing. Ms. Dietrich's lawyer alleges that the JCA "have either deliberately or incompetently failed to cite controlling authority which is directly contrary to the positions they advoeatc." Reply page 1. In fact the opposite is true. All three cases cited by Ms. Dietrich's lawyer discussed below: 1) concern a ***defendant (i.e. a party)*** moving to disqualify a

prosecutor, 2) were based on an alleged conflict of interest due to some form of prior representation and 3) conducted evidentiary hearings solely to determine the existence of a confliet of interest. None of these critical factors exist in Ms. Dietrich's situation.

Whitaker v. Commonwealth, 895 S.W.2d 953 (Ky. 1995) dealt with: 1) a ***defendant (i.e. a party)*** 2) moving to disqualify a prosecutor on the grounds that he was once represented by a public defender who now worked with the prosecutor's office, and 3) the granting of a hearing which "the relationship between the attorney and elient that must be the focus of the conflict examination." Id. at 956. Barnett v. Commonwealth, 979 S.W.2d 98 (Ky. 1998) dealt with: 1) a ***defendant (i.e. a party)*** 2) moving to disqualify a prosecutor based on conflict of interest because of his previous actions as a limited guardian of the victim, and 3) an evidentiary hearing which deal with "any potential conflict of interest" based on the fiduciary relationship. Id. at 100. Lastly and most troubling, Powers v. Commonwealth, 2007 WL 625360 (Ky. App) dealt with: 1) a ***defendant (i.e. a party)*** 2) moving to disqualify a prosecutor who had previously represented his ex-girlfriend and co-conspirator, and 3) an evidentiary hearing whose focus was to be on "the relationship between the attorney and the client." Id. *2. It is this case in which Ms. Dietrich's lawyer relies most heavily. He cites the quote "[g]enerally, the trial court must conduct an evidentiary hearing to weigh the evidence suggesting bias on the part of the prosecutor's entire office." Reply Page 8, *quoting* Powers *2. The first word of the quote illustrates the lack of a mandate. If trial courts were truly required to hold a hearing any time bias was suggested then the Court of Appeals would have omitted the qualifier "***generally***" and simply said that a hearing is mandated. Id. Further, Ms. Dietrich's lawyer fails to quote the next sentence of the opinion. "But the focus of the inquiry ***must*** be on the relationship between

the ***attorney*** and the ***client***." Id. This is an actual mandate, but not the kind Ms. Dietrich's lawyer would like because no attorney-client relationship exists between Ms. Dietrich and any party to these cases.

As discussed above, Ms. Dietrich has rights as a victim, and that has never been disputed, but she is not a ***party*** to the proceeding. Her lawyer has not cited a single case in which a victim moved to disqualify a prosecutor. The case law her attorney did cite is irrelevant to her situation, and contrary to his stated conclusion. Ms. Dietrich's lawyer's statement that a hearing is mandated is at best a simple error, and at worst a deliberate misrepresentation of the law.

Ms. Dietrich's Lawyer Urges this Court to Apply the Wrong Standard to the Issue of Disqualification.

Ms. Dietrich's attorney misstates the proper legal standard for disqualification of a prosecutor. Ms. Dietrich initially notes the language of KRS 15.733(3) as requiring "aetual prejudice". Her lawyer dug deep into his thesaurus and described a "vituperative diatribe" as being an "expression of 'actual prejudice'. Reply Page 12. However, in the following paragraph and for the remainder of the reply, Ms. Dietrich's lawyer urged the Court that "there is, at least, the ***appearance of impropriety*** in the 'Trinity' eonneetion between Mr. Richwalsky and former Trinity students AZ and WF, if not ***actual impropriety***." Id. 12-13 (*emphasis added*). Ms. Dietrich's lawyer also verbally mislead this Court during the hearing on August 21st when he continued to use the "appearance of impropriety" language. As this Court is well aware, "impropriety" and the "appearance of impropriety" are the standards set for judges in Kentucky. SCR 4.300 Kentucky Code of Judicial Conduct, Cannon 2. "Appearance of impropriety" and "actual impropriety" are not the standards for disqualification of a prosecutor. ***Actual Prejudice***

is a much higher standard to meet, which explains the reasoning behind Ms. Dietrich's lawyer's misrepresentation. The Commonwealth's previously filed response and accompanying case law establish the difficult threshold of meeting the actual prejudice standard. Ms. Dietrich's lawyer does not challenge the standard set forth in those cases because his client's situation is nowhere near analogous.

The Ethical and Statutory Duties of a Prosecutor Were Fulfilled Despite Ms. Dietrich's Dissatisfaction With the Recommended Disposition

Ms. Dietrich's evident dissatisfaction with the proposed plea agreements in these cases does not provide a basis to inquire into how and why the JCA exercises its prosecutorial discretion. Kentucky law has given Ms. Dietrich an avenue by which she can express her dissatisfaction: the right to make a victim impact statement under KRS 421.500.

The JCA "has the responsibility of a minister of justice, and not simply that of an advocate." SCR3.130(3.8) cmt. 1. While the JCA has "broad discretion" in prosecuting criminal cases, the JCA remains bound by its constitutional and statutory duties to see that justice is done. These responsibilities cannot be delegated to others, but must ultimately rest with the prosecutor. Kentucky's victim rights statutes require that prosecutors consult with crime victims during the course of a case, but simply do not shift the prosecutorial duty—to do justice—to anyone else. KRS 421.500 does not permit a crime victim, or her lawyer, to control the prosecution of a case, or to veto a negotiated plea offer. KRS 421.576(3) specifically states "***"Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial." KRS 421.576 (3).*** If the victim in this case disagrees with the plea agreement she has the opportunity

to address the Court at disposition.

The JCA's discretion and duty is heightened in juvenile cases where the focus is not purely punitive but on rehabilitation of the offenders. As this Court is well aware, the Kentucky Supreme Court has statcd that "our juvenile code is comprehensivc in scope and rehabilitative in purpose..." W.D.B. v. Commonwealth, 246 S.W.3d 448, 450 (Ky. 2007); *see also* KRS 600.010 describing prevcntion of recidivism and rehabilitation of the juvenile offender as the ultimate goal of the juvenile justice system. Thus, in the underlying juvenile cases, Mr. Richwalsky had a duty to administer justice with the ultimate intcnt of the rehabilitation of W.F. and A.Z. The recommended disposition fulfills the duties of a juvenile prosecutor notwithstanding the dissatisfaction of the victim.

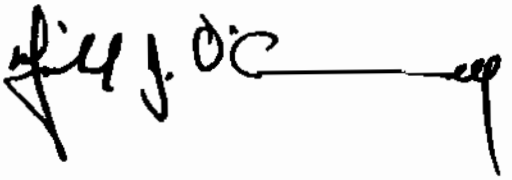
It is perfectly understandable that Ms. Dietrich, like any other vietim, desires a more punitive sentence for the offenders. While the wishes of a vietim are certainly faetors which a prosecutor takes into aecount, a proseeutor is ultimately guided by the ethical duties and statutory goals herein deseribed. Ms. Dictrieh's lawyer seeks an improper evidentiary hcaring which would question the factors Mr. Richwalsky earefully weighed in reaehing the recommended disposition. This is so despite the fact that Ms. Dietrich does not challenge the JCA's discretion, rather she affirms that it was executed properly: "[Ms. Dietrich] does not seek to interfere or challenge the [JCA's] prosecutorial charging discretion, not that offiee's discretion to enter into plea agreements." Reply Page 7. Therefore, Ms. Dietrich is left with her statutory right to cxpress her displeasure to this Court, a right she will exercise just as soon as her lawyer ceases his self-serving interference.

CONCLUSION

This Court should deny Ms. Dietrieh's motion based on the legal standard and analysis provided in the Commonwealth's response. The position of the JCA is eorrect and founded entirely in law despite Ms. Dietrich's lawyers concerns that it "files [sic] in the face of published authority to the eontrary ..." Reply Page 13. Simply put, the JCA wants nothing more than to see that Ms. Dietrich is permitted to exercise her statutory rights. Those rights include the opportunity to address tbis Court regarding sentencing. Those rights do not include disqualifying the JCA or holding an irrelevant evidentiary hearing.

For tbe above statcd reasons and those stated in its response, the Commonwealth respectfully requests that this Court **DENY** Ms. Dietrich's motion so that the Court can properly move forward in this matter toward disposition

Respectfully submitted,



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JEFFERSON DISTRICT COURT
JUVENILE SESSION
DIVISION 88/99
JUDGE DEANA McDONALD

IN THE INTEREST OF: WILLIAM FREY, A CHILD and AUSTIN ZEHNDER, A CHILD

COMBINED REPLY AND RESPONSE TO MOTION TO DISQUALIFY JEFFERSON COUNTY ATTORNEY AND MOTION TO STRIKE PRIVATELY-RETAINED ATTORNEY APPEARANCE AND TO STRIKE THE PLEADINGS OF SAVANNAH DIETRICH (HEREINAFTER "SD")

* * * * *

The Jefferson County Attorney's Office and Counsel for AZ and WF have joined forces in an effort to stifle the rights of Savannah Dietrich in her quest to obtain justice for the sexual assaults committed on her by AZ and WF. In so doing, both the County Attorney and counsel for AZ and WF have either deliberately or incompetently failed to cite controlling authority which is directly contrary to the positions they advocate.[1]

I. SD'S "STANDING" AND AZ AND WF'S STATEMENT THAT SD'S OBJECTION "TO THE DISPOSITION MUST BE STRICKEN."

[1] The conduct of opposing counsel could invoke the provision of SCR 3.130(3.3)(a)(1) or (2) Candor toward the tribunal:

(a) A lawyer shall not knowingly:

(1) make a false statement of act or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal published legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed to opposing counsel. . . .

SD believes that the filing of counsel for AZ, WF, and the County Attorney warrant the imposition of sanctions pursuant to CR 11. SD will request a hearing on her application for sanctions after the entry of a final judgment in accordance with the procedure specified in ***Johnson v. Williams***, Nos. 2010-CA-000398-MR, 2010-CA-000530-MR (Not to be Published.)(Copy attached.) (Note: The County Attorney failed to comply with CR 76.28(4)(c) when he cited unpublished authority. . . . "[A] copy of the entire decision shall be tendered along with the document to the court and *all parties to the action*.") and considering the factors in ***Clark Equipment Company, Inc. v. Bowman***, 762 S.W.2d 417 (Ky.App. 1988).

The County Attorney asserts that SD "lacks to requisite legal interest in the proceeding for her to assert the present motion." (Response, p.2.)

Counsel for AZ and WF state "14. In criminal proceedings, a non-party witness has no standing to file motions, make objections to trial proceedings, or to seek redress from claimed Fourth Amendment violation." (Motion, p.7)

SD is not merely a "non-party" witness; she is the victim of at least two sexual assaults. As such she has rights!

KRS 421.500 defines "victim" as one "who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as . . .sexual abuse. . . ."

> Under Kentucky law the victim has the right to inform the court of the victim's position "on the *sentencing* or release, including shock probation, of the defendant." KRS 421.520(3)
>
> * * * * *
>
> Next, appellant argues that the victim was bound by the Commonwealth's plea agreement. Ms. Claycomb was not made a party to the agreement. *Crime victims should have rights, and they do.* We hold that the rights provided to crime victims by KRS 421.500 through 421.550 belong to the victim independent of the Commonwealth, and cannot be plea-bargained away without the crime victim's actual approval. Neither the Commonwealth nor appellant extinguished those rights in the plea agreement. Of course, this is not to suggest that the vietim can prevent or destroy the plea agreement process, but the victim cannot be made to surrender rights by virtue of an agreement of which she is not a party. If defendants or the Commonwealth wish to bind "victims" from exercising their rights, then they will have to seek their approval on plea agreements.
>
> * * * * * *

> *In the current case the victim has rights independent of the Commonwealth and may assert an objection regardless of the Commonwealth's position.*
>
> Finally, appellant argues that any disagreement by the victim with respeet to the Commonwealth's position should have been disclosed during the plea negotiations. Appellant entered into an agreement with the Commonwealth. He could have insisted upon the victim's inclusion into the agreement. It was the duty of the appellant to determine the relative strength of the agreement. The statutes are very clear on this matter. The victim has the right to convey the impaet of the crime to the court and take a stand on sentencing. The Commonwealth and appellant could not dispose of these rights by their own agreement. The victim should not be stripped of her rights as a result of appellant's failure to properly ascertain these rights during the plea agreement negotiations.
>
> This matter is reversed and remanded for a hearing consistent with this Opinion. The Commonwealth shall be barred from any input at the hearing reconsidering the Motion for Shock Probation; however, the victim shall be allowed to make her "recommendation for an appropriate sentence" pursuant to KRS 421.520(2), as well as exercising any other rights provided her by law.
>
> (Emphasis added.)
>
> ***Wilson v. Commonwealth,*** 839 S.W.2d 17, pp. 20-21 (Ky.App.1992)

SD was not a party to either plea agreement. Both the County Attorney and counsel for AZ and WF have misstated what rights she has as a victim, and the plea agreements do not abrogate her rights under KRS 421.500, *et seq*.

In ***Matheny v. Commonwealth***, 37 S.W.3d 756 (Ky. 2001), the prosecution and defendant reached a plea agreement with which the victim disagreed. When she asked to be heard, both defense counsel and the Commonwealth were surprised.

The Supreme Court ruled that the trial court erred by permitting the Commonwealth to withdraw its offer.

Absent express approval in a plea agreement, a crime victim is not bound by its terms. As stated by the Court of Appeals in ***Wilson v. Commonwealth***, Ky.App., 839 S.W.2d 17 (1992), "[T]he rights provided to crime victims by KRS 421.500 through 421.550 belong to the victim independent of the Commonwealth, and cannot be plea bargained away without the crime victim's actual approval." ***Id.***, at 21. However, this fact does not free the Commonwealth from performing its part of the plea agreement as to a sentencing recommendation. *Id. A crime victim's right to make his or her feelings, opinions, and experiences known to the trial court prior to sentencing has no bearing on the Commonwealth's obligation to adhere to the terms of a completed plea agreement.*

Rather, the statute gives a crime victim the right to be heard by the trial court prior to sentencing. The impact of a crime victim's input on the viability of a consummated plea agreement is for the trial court alone to decide.

Having determined that the trial court erred in allowing the Commonwealth to withdraw its offer after consummation of the plea agreement, we must next determine what remedy is appropriate.

We hold that this case must be remanded for a new sentencing hearing. The sentencing hearing shall be on the two counts of first-degree sexual abuse to which Matheny pled guilty on August 19, 1994. At the hearing, the Commonwealth shall make its sentencing recommendation according to the original plea agreement, *i.e.*, recommend that the sentences be served concurrently and that Matheny be granted probation.

We next address the effect of the trial court's acceptance of Matheny's guilty plea and the fixing of his sentence in accordance with the Commonwealth's recommendation. The acceptance or rejection of a guilty plea is controlled by RCr 8.10, which provides in pertinent part:

If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in that guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement. The court can defer

accepting or rejecting the plea agreement until there has been an opportunity to consider the presentence report.

In the case at bar, when the trial court accepted Matheny's plea of guilty to the two counts of first-degree sexual abuse on August 19, 1994, it never advised Matheny that it was rejecting the plea agreement. On the contrary, the trial court manifested an objective confirmation of the agreement by *accepting* Matheny's guilty plea and fixing his sentence according to the Commonwealth's recommendation. While, under the rule, the trial court could have deferred its decision to reject or accept the plea until it had the opportunity to review the presentence report, it did not. The only matters left unresolved on August 19, 1994, were whether the sentences should be run concurrently or consecutively, and whether to probate Matheny. These unresolved issues are all that are left to be decided at the new sentencing hearing.

Our holding in this case is seemingly inconsistent with the holding of ***Simpson v. Commonwealth***, Ky., 759 S.W.2d 224 (1988), which is factually quite similar on this issue. However, ***Simpson*** is distinguishable. First, in ***Simpson***, the trial court granted the defendant's motion to withdraw his guilty plea. ***Id.,*** at 228. Whereas, in the case at bar, the trial court granted the Commonwealth's motion to withdraw its recommendation. Next, upon accepting the defendant's plea, the trial court in *Simpson* plainly informed the defendant that it was not bound by the plea agreement and that the defendant was still subject to the full range of penalties. ***Id.*** In the case at bar, the trial court did not so admonish Matheny.

For guidance to the bench and bar, we set forth the preferred procedure a trial court should follow when accepting a guilty plea that is made pursuant to a plea agreement. As stated by the Court of Appeals in ***Misher v. Commonwealth***, Ky.App., 576 S.W.2d 238 (1978), "The sentencing court should merely accept the plea, note the recommendation or agreement concerning sentence, and set a day certain for sentencing. No sentencing at all should be carried out until KRS 532.050 has been complied with." ***Id.***, at 241. (Emphasis added.) ***Id.***, pp. 757-759.

The holding in ***Matheny***, ***supra***, was confirmed in ***Hoskins v. Maricle***, 150 S.W.3d 1 (Ky.2004), at pp. 25-26. In fact, "[The trial judge is not precluded from considering statements

from other family members or friends of the victim." ***Id.*** SD's parents will most likely request an opportunity to address the court on the effects the crimes have had on their daughter.

To the extent that counsel for AZ and WF assert to the Court that SD "eannot apply for nor seek to invoke judicial resolution of her general verbalized dissatisfaction" (Memo, ¶ 11), they are wrong. AZ and WF counsels' attempts to relegate SD to the status of "a mere witness" (¶ 12-13, p.3) "a non-party witness," (¶ 14) coupled with their statement that "The Motion to Disqualify the County Attorney filed by Mr. Clay on behalf of SD, which ostensibly seeks to object and attack the disposition in this case must be stricken," ignore KRS 421.500, *et seq.*, and published authority to the contrary – authority which even cursory research would have disclosed to counsel that their position is meritless.

SD readily acknowledges she has no role in the eharging decision, the plea agreement or any other aspect of the prosecution addressed in KRS 421.576. She does most assuredly intend to express her dissatisfaction with the resolutions of these cases, and she will ask the Court to reject the plea agreements at the disposition hearing in accordance with her rights as a victim.

II. MOTION TO DISQUALIFY JEFFERSON COUNTY ATTORNEY

The County Attorney launches a four-pronged attack on SD's motion to disqualify.

A. SD Does Not Have Standing to Move to Disqualify the Jefferson County Attorney's Office.

Based upon the authority cited ***supra***, SD does have not only a judicially recognizable interest, *i.e.*, rights in these cases; she also has statutorily enacted rights as a crime victim.

B. The Jefferson County Attorney's Office Enjoys Deferential Prosecutorial Discretion.

Savannah Dietrich does not seek to interfere or challenge the County Attorney's prosecutorial charging discretion, nor that office's discretion to enter into plea agreements. She is simply asserting her rights as a victim of admitted sexual assaults by AZ and WF.

As for the propriety of conducting an evidentiary hearing on the issue of disqualifications, the County Attorney fails to cite controlling authority to the contrary.

To be clear, SD seeks to disqualify the County Attorney's office on the following specific grounds:

> § 15.733. Disqualification of prosecuting attorney – Appointment of a special prosecutor.
>
> (2) Any prosecuting attorney shall disqualify himself in any proceeding in which he or his spouse, or a member of his immediate family either individually or as a fiduciary:
>
> (c) Is known by the prosecuting attorney to have an interest that could be substantially affected by the outcome of the proceeding:
>
> (d) Is to the prosecuting attorney's knowledge likely to be a material witness in the proceeding;
>
> (d) Has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.
>
> (3) Any prosecuting attorney may be disqualified by the court in which the proceeding is presently pending, upon a showing of actual prejudice.

It is readily apparent that Mr. Richwalsky's conduct in these cases and his "actual prejudice" against SD are sufficient grounds to justify disqualifications.

The County Attorney Michael O'Connell stated to the Court on July 27, 2012, that this motion to disqualify should be decided on the pleadings without an evidentiary hearing. That fallacious position is reiterated in his response. "[A] hearing on this matter would undoubtedly turn into a sideshow with no legal basis or necessity." (Response, p. 3.)

These statements ignore published authority in which appellate courts have ordered evidentiary hearings on the issue of disqualification. See ***Whitaker v. Commonwealth***, 895 SW2d 953 (Ky.1995) "On Appeal, this Court directed a remand, ordering the trial court to hold a hearing. . . ."***Id.***, p. 955; ***Powers v. Commonwealth***, No. 2006-CA-000117-MR (Not To Be Published.)(Copy attached.), "Generally, the trial court must conduct an evidentiary hearing to weigh the evidence suggesting bias on the part of the prosecutor's entire office," citing ***Whitaker, supra; Barnett v. Commonwealth***, 979 S.W.2d 98 (Ky. 1998), "At sentencing, the trial court allowed appellant to examine both Cox [county attorney] and Harding regarding any potential conflict of interest," ***Id.***, p. 100.

Thus an evidentiary hearing on disqualification is not only necessary but mandated.

C. The Plea Agreements Reached Are in Accordance with the Kentucky Rules of Criminal Procedure and were approved by the Court.

Assuming arguendo, the plea agreements were "in accordanee with the Kentueky Rules of Criminal Procedure," SD believes the plea agreements eontain provisions which are contrary to Kentucky law, as she alleges in her disqualification motion.

An evidentiary hearing is necessary to establish Mr. Richwalsky's testimony on the record on this issue.

Moreover, SD does not believe the Court's acceptanee of the pleas of guilty by AZ and WF is the functional equivalent of the Court's acceptance of the disposition recommendation. The Court is free to accept or reject the agreement.

A further troubling representation of the County Attorney, himself a former district and circuit court judge who accepted hundreds of guilty pleas, is "The provision allowing thc Defendants' [***sic***.] to withdraw their guilty pleas at any time prior to sentencing is the right of any

defendant expressly codified in the Kentucky Rules of Criminal Procedure: At any time before judgment the court may permit the plea of guilty. . .to be withdrawn and a plea of not guilty substituted." RCr 8.10. SD's lawyer knows that this is well-established Kentucky law." (Response, pp. 6-7.) SD's lawyer knows no such thing; in fact, the Supreme Court has stated the consequences of a defendant's knowing and voluntary plea. The Court *may* allow a defendant to withdraw a guilty plea. The defendant does not have the *right* to withdraw a guilty plea. ***Williams v. Commonwealth***, 229 S.W.2d 49 (Ky.2007), holds:

> To be valid, a plea must be knowing, intelligent and voluntary. ***Haight v. Commonwealth,*** 760 S.W.2d 84, 88 (Ky.1988), and a trial court shall not accept a plea without first determining that it is made voluntarily with understanding of the nature of the charge;. RCr 8.08. RCr 8.10 provides that a guilty plea may be withdrawn with permission of the court before judgment. *A motion to withdraw a plea of guilty under RCr 8.10 is generally addressed to the sound discretion of the court; however, where it is alleged that the plea was entered involuntarily the defendant is entitled to a hearing on the motion.* ***Edmonds v. Commonwealth***, 189 S.W.3d 558, 566 (Ky. 2006). *If the plea was involuntary, the motion to withdraw it must be granted; if it was voluntary, the trial court may within its discretion, either grant or deny the motion.* ***Rigdon v. Commonwealth***, 144 S.W.3d 283, 288 (Ky. App. 2004). A trial court abuses its discretion when it renders a decision which is arbitrary, unreasonable, unfair or unsupported by legal principles. ***Edmonds***. 189 S.W.3d 283, 288 (Ky. App. 2004). The inquiry into the circumstances of the plea as it concerns voluntariness is inherently fact-sensitive, ***Id.***, at 566. Accordingly, the trial court's determination as to whether the plea was voluntarily entered is reviewed under the clearly erroneous standard. ***Id.***
>
> ***Id.***, pp. 50-51 (Emphasis added.)

In ***Williams, supra***, thc Court determined Williams' plea was not involuntary and affirmed the trial court's denial of the motion to withdraw guilty plea pursuant to RCr 8.10.

SD fully understands that the decision to adopt the provisions of the plea agreement pursuant to the provisions contained therein are solcly in the discretion of the Court.

She simply intends to assert her rights as a vietim in expressing her opinion as to an appropriate disposition of the crimes to which AZ and WF pled guilty.

D. Lack of Standing Aside SD's Allegations Do Not Establish "Actual Prejudice" Required by KRS 15.733 to Disqualify a Prosecuting Attorney.

Having debunked the County Attorney's lack of standing argument, SD will now address the issue of actual prejudice in sufficient detail to establish her entitlement to an evidentiary hearing on the issue of disqualification.

Mr. Riehwalsky's affidavit filed in Case No. 10-J-701053 establishes actual prejudice pursuant to KRS 15.733(3):

> 12. Throughout his career the Affiant has made it always a priority to insure that Victims of crime were always fully advised, consulted and participated in the proceedings. This Victim was treated no different. [*sic.*] She is of course, the first to ever register an alleged complaint of this nature.
>
> 13. On June 13, 2012, a Pre Trial Conference was held in the underlying ease. Prior to said Conference the Affiant along with the Detective and Victim Advoeate met with the Victim and her Mother for the better part of an hour. The Resolution which Affiant proposed to make was discussed in detail. As per the Affiant's custom, said step was taken before any offer was formally extended to the Defendants. The full and complete offer was discussed.
>
> 14. Movant also conveniently omits the in-depth discussion on June 13, wherein trial options were also discussed with her. Most notably, if the case were to proceed to trial renewed forensic efforts would have to be made in an attempt to retrieve information from the cell phones in question. Outside Labs would have to be contacted and engaged. In all probability significant time would be added prior to getting this case "trial ready." She and her Mother were made aware of that information as well.
>
> 15. The Victim and her Mother were fully apprised and acquiesced in the proposed settlement. They were also advised the Defendant's [*sic.*] wanted to take some time to consider same and further review any repercussions of said plea.

16. The case was passed for two (2) weeks. Further, the Victim and her Mother were unequivocally told that when the case was back on the Docket in Two weeks time – the Defendant's [*sic.*] would either enter Guilty Pleas per the Recommendation or a Trial Date would be set.

17. As further evidence of her understanding and approval of the proposed resolution the Victim requested the Defendant's [*sic.*] list and/or identify all individuals to whom they exhibited her photos. This was her only request or addition to the proposed offer.

18. On June 18, 2012 Affiant reduced the Offer to writing. In a cover letter accompanying same to defense counsel – there is reference to the Victim's request for such disclosure [SEE ATTACHED EXHIBIT A].

19. The case was next on the docket on June 26, 2012. In the several days leading up to that court appearance, the Vietim Advocate made several telephone calls and left several messages regarding the upeoming court date. The Victim did call baek one time – and eonfirmed the next court date. Additionally, during that intervening two-week period neither the Vietim nor her Mother contacted Affiant (or any other member of the Prosecution Team) with any questions, reservations or additional comments.

20. On the day set for the Guilty Plea both Movant and her Mother arrived late to court. Affiant believed in fact that they had eleeted not to appear or be present – having heard nothing to the contrary and noting the numerous unsuccessful attempts to reach them.

21. The Victim is in error (or at worst intentionally attempting to mislead the Court) when she states under oath that she had no knowledge of the entry of the guilty plea. She also misstates that she was not apprised of the terms and conditions of any proposed guilty plea. She also erroneously states "I was told that the boys were not planning on pleading guilty and no official offer had been made to them." None of this fanciful rendition oecurred. Affiant spoke to the Victim at all times while accompanied by the other members of the prosecution team.

22. The Affiant never told the Victim that "she needed to move on' [*sic.*] or to "get eounseling." Affiant has never said same to

> any Victim in any case. It is preposterous to suggest that he would start such now with this particular Victim.
>
> 23. Savannah freely admits she was 'very upset" – "extremely emotional" – and "hysterical" when she left Court on June 26th. In light most favorable to her – perhaps it is not so much she is trying to intentionally mislead and deceive this Court but rather the delusional assertions made in her Affidavit are merely the byproduct of what she would like to believe happened and not what in actuality took place. She cannot truthfully recall what she knew and agreed to. Rather than admit to same she has created a scenario whieh has no basis in fact or reality.
>
> 24. Affiant never told the Victim that "jail time was for real rapists, murderers and robbers." It is also important to point out that any allegation of Rape was never raised or claimed by the Victim.

It is hard to conceive of a more vituperative diatribe which assaults SD's character from the beginning to the end of his Affidavit.

By SD's count, Mr. Richwalsky accuses her of lying ten (10) times. He accuses her of being "delusional." He refers to her allegations against him as "preposterous."

SD ***never*** "acquiesced in the proposal settlement." In fact, Mr. Richwalsky ignored the one request she made, ***viz.***, that she be provided with a list of people to whom AZ and WF displayed the photos they took of SD.[2]

Mr. Richwalsky's affidavit could hardly be more graphic in his expression of "actual prejudice."

SD also seeks disqualification of the County Attorney's Office on thc basis of KRS 15.733 (2)(c) and (f). Thc original motion to disqualify lays out the "Trinity" connection to the extent it is presently known. Notwithstanding the County Attorney's protestation to the contrary, there is, at least, the appearance of impropriety in thc "Trinity" connection betwecn Mr.

[2] Mr. Richwalsky did send a letter to counsel requesting the identity of anyone who saw the photographs; however, SD was not provided any such information.

Richwalsky and former Trinity students AZ and WF, if not actual impropriety. The appearance of impropriety justifies an evidentiary hearing to resolve this issue.

SD also cited KRS 15.733(2(d) as a basis for disqualifying the County Attorney's office because Mr. Richwalsky's affidavit could cast him in the role of a witness in further proceedings. Had the contempt proceeding progressed, he most assuredly would have been a witness.

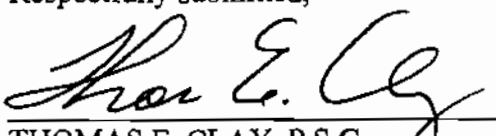
CONCLUSION

The assertion by the County Attorney and counsel for AZ and WF that SD lacks standing to challenge the disposition of these charges is specious and sanctionable.

The County Attorney's position that SD's basis for disqualification in her motion should be summarily denied files in the face of published authority to the contrary, authority which the County Attorney conspicuously failed to cite.

SD renews her request for an evidentiary hearing to afford her an opportunity to establish conclusively that the Jefferson County Attorney's Office should be disqualified.

Respectfully submitted,



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Counsel for Savannah Dietrich

CERTIFICATE

This is to certify that a copy of the foregoing was on August 15th, 2012, hand-delivered/mailed/sent electronically to:

Hon. David Mejia
455 S. 4th Street, Suite 382
Louisville, KY 40202

Hon. Christopher J. Klein
600 West Main Street, Suite 300
Louisville, KY 40202

Michael J. O'Connell
Jefferson County Attorney
600 W. Jefferson Street
Louisville, KY 40202

THOMAS E. CLAY

CASE NO. 10-J-701053
12-J-700320
12-J-700321

FILED IN CLERK'S OFF
JEFFERSON CIRCUIT CO

2012 AUG 14 P 1:37

CLERK

BY D.C.

JEFFERSON DISTRICT COURT
JUVENILE SESSION
JUDGE ANGELA McCORMICK BISIG

IN THE MATTER OF:

SAVANNAH DIETRICH, et al

NOTICE

All parties shall take notice that the following motion will be presented in the courtroom of the above-referenced Court on Tuesday August 21, 2012 at 10:30 a.m., or as soon thereafter as counsel may be heard.

THE COURIER-JOURNAL'S MOTION TO OPEN THE HEARING ON THE COURIER-JOURNAL'S MOTION FOR ACCESS TO COURT RECORDS

The Courier-Journal, Inc. (the "Courier-Journal"), by counsel, hercby respectfully moves the Court to conduct an open and public hearing on the pending motion filed by the Courier-Journal for public access to the court records in this matter.

This motion deals simply with opening the August 21, 2012 hearing on the Courier-Journal's motion for access to the court records in this case. This particular hearing can be done without naming the two Defendants and only naming Savannah Dietrich, who has clearly consented to be named.

It is important that the public know how the Court is handling this matter because there has been so much publicity and public speculation about what has or has not happened in this case. There have been public suggestions of improper actions by prosecutors in this case. In addition, there is a public interest surrounding the effort to disqualify Judge Bisig, the transfer of the case to Judge McDonald, and the eventual remand of the case back to Judge Bisig. Judges and the County Attorney are elected public officials, and it is vitally important for the public to

see how their involvement in this judicial process is handled. Further, it is essential that the court process in this case not be entirely secret, so that the public have a real basis to form a judgment as to the willingness of the official participants to allow for scrutiny of the juvenile justice process.

The hearing on the Courier-Journal's motion will focus on the legal basis for the Court to grant access to the court records. The relevant issues involve the juvenile justice system, the effort to punish Savannah Dietrich for speaking publicly about what happened to her, and her unhappiness and disapproval with the operation of the system. Serious questions have been raised in this case about how the system has been used to protect, perhaps inappropriately, the two Defendants who have admitted to abusing Ms. Dietrich, while at the same time unconstitutionally depriving Ms. Dietrich of her First Amendment rights to free speech. These are the issues to be addressed in the hearing. They center on the involvement of the elected official participants, and it is vital for the public to be able to see how the Court addresses them.

Juvenile court hearings are not closed for the protection of elected officials such as judges or prosecutors. Nor are juvenile court hearings closed for the protection of any other public agencies or adult participants in the juvenile justice system. Here, closure of the hearing on the Courier-Journal's motion for access to court records would serve no purpose other than to shield the official adult participants in this case from exactly the kind of public scrutiny that the First Amendment and the principles of democracy demand. As the Kentucky Supreme Court has held,

> The most important characteristics of the judiciary are integrity and credibility. Courtrooms are kept open not so that members of the public can expose wrongdoings; rather, they are open to allow the citizens to see for themselves how their laws are impartially applied. It is to the benefit of a free society that judicial proceedings be publicly conducted. Not only are all citizens to be treated equally

> under the law -- they must be able to see that they are equally treated in their courts.

Lexington Herald Leader Co. v. Tackett, 601 S.W.2d 905, 906-907 (Ky. 1980).

The Court has the authority to conduct an open hearing on the Courier-Journal's motion. The statute relevant to juvenile court hearings provides,

> The general public shall be excluded and only the immediate families or guardians of the parties before the court, witnesses necessary for the prosecution and defense of the case, the probation worker with direct interest in the case, a representative from the Department of Juvenile Justice, the vietim, his parent or legal guardian, or if emancipated, his spouse, or a legal representative of either, sueh persons admitted as the judge shall find have a direct interest in the case or in the work of the eourt, and such other persons as agreed to by the child and his attorney may be admitted to the hearing.

KRS 610.070(3) (emphasis added). The statute is elear that the Court may open any juvenile court hearing for the attendance of those who "have a direet interest in the case or in the work of the court." Id.; see also Ky. Press Ass'n v. Kentucky, 454 F.3d 505, 509-510 (6th Cir. 2006) (holding that Kentucky courts could reasonably interpret KRS 610.070 to allow for access to juvenile proceedings by the news media).

Here, there can be no question that the Courier-Journal and the public have a direct interest in this case and in the work of the Court as contemplated by KRS 610.070(3). As a general matter, the public has a direct interest in juvenile public offender cases brought under KRS Chapter 635 because the public is a party to such cases. Like adult criminal cases, juvenile offender cases are prosecuted by government offieials on behalf of, and in the name of, the public. See, e.g., Johnson v. Simpson, 433 S.W.2d 644, 646 (Ky. 1968) ("...the public is a party to all criminal proceedings. The proceeding is prosecuted in the name of the public."). The Kentucky Supreme Court re-affirmed these fundamental principles of judicial openness in Riley v. Gibson, 338 S.W.3d 230 (Ky. 2011). In Riley, the Court held that contempt hearings, like

hearings in criminal cases, must be open to the public and press in part because the public has a "stake in the process and outcome of such proceedings." Id. at 236.

Here, the public has an even more direct and concrete interest in the hearing on the Courier-Journal's motion for access to the court records. The hearing involves the public's right of access to court records. As the Kentucky Supreme Court has held,

> We recognize that the government belongs to the people, that its activities are subject to public scrutiny, and that the news media is a primary source for protecting the right of public access. This right includes the public's "right to inspect and copy public records and documents, including judicial records and documents."

Courier-Journal & Louisville Times Co. v. Peers, 747 S.W.2d 125, 128 (Ky. 1988) (*quoting* Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978)).

Both as a matter of constitutional law and as set forth in KRS 610.070(3), the Court has the authority to, and should, conduct the hearing openly. Because the hearing will deal only with the public's right of access to court records, there is every reason to conduct the hearing publicly.

CONCLUSION

For all the reasons set forth herein, the Court should conduct an open and public hearing on the Courier-Journal's motion for access to court records in this case.

Respectfully submitted,

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Counsel for the Courier-Journal

CASE NO. 12-J-700321
12-J-700320

JEFFERSON JUVENILE DISTRICT COURT
DIVISION EIGHTY-EIGHT (88)
HON. ANGELA MCCORMICK BISIG, JUDGE

IN RE: W.F., a CHILD
A.Z., a CHILD

NOTICE-MOTION-ORDER

*** *** ***

TO: Hon. Paul Richwalsky
Jefferson County Attorney
600 West Jefferson Strect
Louisville, KY 40202

Hon. Thomas Clay
462 South 4th Street, Suite 101
Louisville, KY 40202
Counsel for Savannah Dietrich

Please take notice that the undersigned will make the following Motion and tender the attached Order on Wednesday, August 15, 2012 at 9:00 a.m. in the above-listed courtroom.

JOINT MOTION FOR PERMISSION FROM THE COURT TO REVIEW THE JULY 3, 2012 HEARING REGARDING CASE NO. 10-J-701053

Come the child, W.F., by and through Counsel, Hon. Christopher J. Klein, and the child, A.Z., by and through counsel, David Mejia, and respectfully move this Court to enter the attached Order granting the child, W.F.'s and the child, A.Z.'s, attorneys permission to review a Hearing that took place on July 3, 2012 in Case 10-J-701053. W.F. and A.Z. further request copies of any Motions filed by Publie Defender Daniel Whitley on July 3, 2012 concerning the contempt of Savannah Dietrich.

In support of said Motion, the child, W.F., by counsel, and the ehild, A.Z., by counsel, state the following:

1. On June 26, 2012, Judge Deana McDonald provided all the parties present with an explanation of the confidentiality that surrounds Juvenile Court. On June 27, 2012, W.F. and A.Z. filed a Motion to hold Savannah Dietrich in contempt for violation of Judge McDonald's

Court Order. The Motion was filed in Case Nos. 12-J-700321 and 12-J-700320. The case was passed to June 28, 2012 for Savannah Dietrich to be present and Daniel Whitley of the Jefferson County Public Defender's office was appointed to represent her. A Motion was made by Public Defender Daniel Whitley to continue the case and a Hearing date was granted for July 5, 2012.

2. Up until this time, the Motion to hold Savannah Dietrich in contempt was in Case Nos. 12-J-700321 and 12-J-700320.

3. Pursuant to the Affidavits supplied by Daniel Whitley, a Hearing date was scheduled on behalf of Savannah Dietrich on July 3, 2012. At that time, a Motion for a Bill of Particulars was attempted to be served on Assistant County Prosecutor, Paul Richwalsky, who is the prosecutor in this case. At that Hearing, the Hon. Judge Angela McCormick Bisig was present; however, no notice had been provided to W.F. and A.Z., or their attorneys.

4. After the July 3, 2012 Hearing, the case was continued back to the original Hearing date scheduled for July 5, 2012. From that point forward, all of the Motions, Affidavits, Memoranda and pleadings made on behalf of the Public Defender's Office were placed in 10-J-701053. It is unclear to the attorneys of W.F. and A.Z. whether or not an ex parte communication occurred by Daniel Whitley of the Public Defender's Office; whether there was a Motion filed to move the Contempt Motion out of 12-J-700321 and 12-J-700320; and whether there is a Court Order allowing for the transfer.

5. W.F. and A.Z., through their attorneys, would like the opportunity to review the Hearing that was held on July 3, 2012 in order to become more familiar with what was stated on behalf of Savannah Dietrich and what Motions were filed on behalf of the Public Defender Daniel Whitley.

WHEREFORE, for the reasons stated above, the child, W.F., and the child, A.Z., respectfully request this Court to enter the attached Order.

Respectfully submitted,

CHRISTOPHER J. KLEIN
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Louisville, KY 40202
(502) 589-6190
COUNSEL FOR W.F.

DAVID MEJIA
455 South 4th Street, Suite 382
Louisville, KY 40202
(502) 584-8991
COUNSEL FOR A.Z.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was hand-delivered, in Open Court, to the above individuals on this, the 15th day of August, 2012.

CHRISTOPHER J. KLEIN

CASE NO. 12-J-700321
12-J-700320

JEFFERSON JUVENILE DISTRICT COURT
DIVISION EIGHTY-EIGHT (88)
HON. ANGELA MCCORMICK-BISIG, JUDGE

IN RE: W.F., a CHILD
A.Z., a CHILD

ORDER

*** *** ***

Motion having been made and the Court sufficiently advised;

IT IS HEREBY ORDERED that the Hearing date scheduled on July 3, 2012 involving Savannah Dietrich shall be made available for review by the attorneys of W.F. and A.Z.

IT IS HEREBY FURTHER ORERED that a copy of any Motions filed by a Public Defender on July 3, 2012 shall be made available to W.F., A. Z. and their attorneys.

Done this the 1 day of _____, 2012.

HON. ANGELA MCCORMICK BISIG, JUDGE,
JEFFERSON JUVENILE DISTRICT COURT, DIV. 88

No objection by for SD
No objection atty for comm.

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
AUG 15 2012
BY _____ DEPUTY CLERK

Tendered by:

CHRISTOPHER J. KLEIN
600 West Main Street, Suite 300
Louisville, KY 40202
(502) 589-6190
COUNSEL FOR W.F.

DAVID MEJIA
455 South 4th Street, Suite 382
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CASE NO. 12-J-700321 JEFFERSON JUVENILE DISTRICT COURT
DIVISION EIGHTY-EIGHT (88)
HON. ANGELA MCCORMICK BISIG, JUDGE

2012 AUG 13 A

IN RE: W.F., a CHILD

BY

W.F.'s OBJECTION TO THE *COURIER-JOURNAL'S* MOTION FOR ACCESS TO COURT RECORDS

*** *** ***

Comes the child, W.F., by and through Counsel, the Hon. Christopher J. Klein, does hereby request this Court to deny the *Courier-Journal's* Motion for access to W.F.'s Juvenile records. In support of this Objection, W.F., through counsel, states the following:

1. The *Courier-Journal* does not have proper standing in its request for access to the Juvenile Court records of W.F. Understanding that this Court will rely upon Courier-Journal and Louisville Times Co. v. Peers, 747 S.W.2d 125 (Ky., 1988), it is the position of W.F. that the Peers decision deals exclusively with Circuit Court civil actions and does not apply to District Court juvenile cases.

2. Assuming that this Court grants the right of the *Courier-Journal* to intervene in this case, KRS 610.340(1)(a) set forth in the Unified Juvenile Code of Kentucky specifically protects all juvenile records of any nature generated pursuant to KRS Chapters 600-645, and shall not be disclosed.

3. Any statutory provisions that may allow for confidential juvenile records to be disclosed, i.e., for good cause, do not apply to this case. It is clearly diseretionary with this Court as to what is meant by the "good cause" exception in KRS 610.340(1)(a). The *Courier-Journal* cites In Re: Kenneth Eastridge, Case No. 96-FJ-1963 (Jeff.Dist.Ct., May 30, 2008) and 08-XX-

000024 as an example of this right to intervene and obtain access to juvenile cases. This Court granted the *Courier-Journal's* Motion for Access to Eastridge's Juvenile file and the Jefferson Circuit Court affirmed this Court's decision. This Court acknowledged the balance of the rule of protection of minors with the public's right to know. In Eastridge, this Court took into consideration several factors to justify the "good cause" provision of KRS 610.340(1)(a) : (1) the fact that Eastridge was now an adult; (2) the underlying case of reckless homicide had been resolved for twelve years; (3) the severity of the underlying charge; (4) the fact that Eastridge had been charged with murder in Colorado; and (5) the public interest in learning from and evaluating this case.

For the obvious reasons, the first four factors listed in Eastridge are no present in this case. The only factor that this ease has in common with Eastridge has to do with publicity. The Eastridge case garnered publicity because the defendant Eastridge was an Iraq war decorated hero who had sustained severe head injuries while fighting in one of the most violent regions in Iraq. Eastridge was involved in the shooting death of a fellow soldier who knew too much about supposed robbery plans Eastridge and other co-defendants had made. At a Bond Hearing for Eastridge, the District Attorney made reference to Eastridge's murder conviction as a twelve-year old. These faets, teamed with Eastridge's violent messages listed on the internet and stories regarding his conduet in Iraq, fueled the publicity surrounding the Colorado murder.

The *Courier-Journal* assumes that because of the publicity generated by this case, that the public has a legitimate and compelling interest in the disclosure of W.F.'s Juvenile file. This could not be further from the truth. There is not a legitimate direct community interest in this case that should override W.F.'s confidentiality of his Juvenile file. The publicity surrounding

this case did not start at its inception, but approximately six months after the start of the investigation.

Savannah Dietrich filed a complaint with the Louisville Metro Police Department on December 26, 2011. Detective Chris Horn of the Louisville Metro Police Department was assigned to investigate the complaint. Charges were filed through the Juvenile Court process and W.F. was arraigned on Sexual Abuse in the 1st Degree and Voyeurism on March 16, 2012. After approximately four to five Pretrial Conferences, this case resulted in W.F. entering a plea of guilty as charged on June 26, 2012. This case progressed as it should have, after a thorough investigation, through Juvenile Court without any media attention or publicity.

4. This case took a turn for the unusual after Judge Deana Donald, filling in for this Court, instructed all parties on June 26, 2012 on the eonfidentiality proceedings of Juvenile Court. After Savannah Dietrich violated Judge MeDonald's Order on the confidentiality of Juvenile Court by tweeting certain comments, including W.F.'s name, an appropriate Motion for Contempt was filed against her.

5. Daniel Whitley, of the Jefferson County Public Defender's Offiee, was appointed to represent Ms. Dietrich on the Contempt Motion. Several Motions were filed upon Ms. Dietrich's behalf, including a Motion to disqualify this Court pursuant to KRS 26(A).020. Attached to the recusal Motion were two affidavits, one signed by Savannah Dietrich and the other by Daniel Whitley. In addition, Paul Richwalsky, Prosecutor for the Jefferson County Attorney's Office, filed an affidavit regarding Dietrich's Motion to recuse this Court.

6. This Court voluntarily recused herself and Judge Deana McDonald rejoined the case in order to hear the Contempt Motion. On July 9, 2012, the *Courier-Journal* filed a Motion to Intervene into the Contempt Hearing and to remove Judge MeDonald's June 26, 2012 Order

regarding confidentiality. Judge McDonald passed the *Courier-Journal's* Motions until July 30, 2012 to allow W.F. to read the Motions, respond to the Motions, and ultimately argue in opposition to the *Courier-Journal's* Motions.

7. While the *Courier-Journal's* Motions were pending in Court, the *Courier-Journal's* reporter, Jason Riley, wrote a story on Savannah Dietrich's Contempt Hearing that was published on the front page of the *Courier-Journal* on Saturday, July 21, 2012. In this article, which did not mention W.F.'s name, a number of Savannah Dietrich's tweets were published, including one about protecting rapists. By the end of the morning on July 21, 2012, W.F.'s name was posted on the *Courier-Journal* blog and the story went viral. By teaming up the word "rapist" and W.F.'s name on the *Courier-Journal's* blog, there was an immediate association that W.F. was "a rapist." Sometime during the day on July 21, 2012, W.F.'s picture was posted and the cyber world now had a name and a picture and labeled W.F. a "rapist." W.F. was never charged with rape, nor were any allegations of rape ever made. The investigation conducted by Detective Horn never mentioned rape and there has never been any evidence to suggest rape. In addition, no photograph of Savannah Dietrich was ever posted on the internet, emailed, texted or disseminated via any media source.

8. Essentially, the *Courier-Journal* spread gasoline in a bone-dry forest, sparked a match, fanned the flames, created an inferno and now wants to use the heat of the roaring fire to say that "good cause" exists to obtain W.F.'s Juvenile file. Surely, the publicity buzz created by the *Courier-Journal's* own actions does not equate to "good cause" for the release of W.F.'s record. This is especially true given the fact that the *Courier-Journal's* story of Savannah Dietrich published on July 21, 2012 assisted to further violate the confidentiality of Juvenile Court. Moreover, this story ran nine days before the parties involved in this case were due back

in Court to obtain this Court's ruling on the *Courier-Journal's* right to enter into the contempt proceedings. Publishing the story on July 21, 2012 was the *Courier-Journal*'s prerogative, but it certainly should not be considered as "good cause" to open W.F.'s Juvenile file.

9. Besides the publieity grounds, the *Courier-Journal* would have this Court believe that there are "legitimate and compelling interests" to overide the eonfidentiality of W.F.'s Juvenile file. These "interests" are listed in the *Courier-Journal's* Motion filed on July 30, 2012 on Page 2. Each alleged "interest" lacks any foundation of "good cause" and will be addressed in the order in whieh they are enumerated.

1.

LEGITIMACY OF THE AGREEMENT BETWEEN
JEFFERSON COUNTY PROSECUTOR'S OFFICE AND W.F.

There is absolutely nothing out of the ordinary regarding the plea agreement reaehed by the Jefferson County Proseeutor's Offiee and W.F. It is a legitimate agreement based upon the faets and cireumstanees surrounding this case and was accepted by this Court. Areas of concern expressed by the *Courier-Journal* regarding the Plea Agreement are the product of the lack of knowledge of the proceedings of Juvenile Court, the unfamiliarity of the protoeol of the Department of Juvenile Justice and the laek of privy to the plea negotiations between the Jefferson County Attorney's Offiee and W.F. Even though the *Courier-Journal* may have questions how Juvenile Court and the Department of Juvenile Justice operates, these questions do not warrant "good cause" to open W.F.'s Juvenile file. The effort of the *Courier-Journal* to obtain W.F.'s juvenile records is akin to the Monday morning quarterback second guessing the decisions made in the previous Sunday's game.

Coneern over the language of the adjudieation of this case is centered upon the verbage "committed-probated" written on the Plea Agreement. This issue is eliminated upon review of

the video of the plea taken by Judge McDonald on June 26, 2012. Judge McDonald specifically addresses the committed-probated language. Judge McDonald stated that it is her understanding of the law that a juvenile who pleads to Sexual Abuse in the 1st Degree shall be committed to the Department of Juvenile Justice. W.F. acknowledged on the record that he shall be committed to the Department of Juvenile Justice and that his placement would depend upon the Sexual Offender Evaluation conducted by the Department of Juvenile Justice. On the record, before accepting the plea, Judge McDonald clearly made everyone understand that probation was not an option and, therefore, could never be contemplated.

The second area of concern regarding the Plea Agreement deals with the provision of diversion at 19½, provided all terms, conditions and requirements, especially those of any treatment program, have been met. This provision of the Plea Agreement is not unusual and as this Court is aware, has been utilized in a number of other cases. This provision is loaded with a variety of conditions that W.F. must complete before the diversion provision would be implemented. Without successful compliance to each and every condition of the Plea Agreement, diversion at the earliest of 19½, will never occur. If W.F. successfully completes each condition, his adjudicated plea will be set aside and the charges dismissed. Therefore, KRS 610.330(1) never enters into play and is irrelevant.

W.F. will be placed by the Department of Juvenile Justice once his evaluation has been completed and the disposition occurs. Pending the disposition date, W.F. has been allowed to remain, by Court Order, under the rules of Home. Additionally, once W.F.'s plea occurred on June 26, 2012, the protocol of the Department of Juvenile Justice was set in motion. W.F. has complied with each and every condition/requirement the Department of Juvenile Justice has placed upon him.

After W.F. is placed, he is required to complete all terms and conditions placed upon him by the Department of Juvenile Justice and this Court including Sexual Offender counseling. W.F. must successfully complete the Sexual Offender treatment which traditionally takes a substantial period of time to complete. After completing the Sexual Offender counseling, W.F. must have another Sexual Offender Evaluation conducted by the Department of Juvenile Justice. Once this has been done and all of the other conditions of the Plea Agreement and of the Department of Juvenile Justice have been fulfilled, the Department of Juvenile Justice will then petition this Court to release W.F. from the Department of Juvenile Justice's custody and control.

This type of Plea Agreement is not new, nor is it unusual in Juvenile Court and certainly does not warrant "good cause" to open W.F.'s Juvenile file to the *Courier-Journal.*

2.

WHETHER, AND TO WHAT EXTENT, THE AGREEMENT HAS BEEN IMPLEMENTED OR ENFORCED

After W.F. entered his plea to Sexual Abuse in the 1st Degree and Voyeurism on June 26, 2012, he must wait for the disposition plan prepared by the Department of Juvenile Justice to be imposed on August 21, 2012. As of this writing, W.F. has complied with the protocol the Department of Juvenile Justice has set into place in anticipation of the disposition date. W.F. has met with and has been interviewed by William McBride of the Department of Juvenile Justice. W.F. has met with a Department of Juvenile Justice counselor and has been evaluated for sexual offender counseling. W.F. has remained drug and alcohol free, not committed any additional offenses, and has remained under the Court Order of Rules of the Home. To somehow suggest that W.F. has not complied with the Department of Juvenile Justice protocol or that some other party is somehow circumventing the applicable Statutes of Juvenile Court is merely the red herring of the *Courier-Journal's* fishing expedition. If the Department of Juvenile Justice, the

Jefferson County Attorney's Officc, or this Court thought that there has been some type of error or failure of W.F. to comply with the applicable Statutes, W.F. would have bcen immediately brought back in front of this Court. Because W.F. has complied with the requests of the Department of Juvenile Justice, and is currently awaiting the disposition date, there is no "good cause" to release his Juvenile Court record to the *Courier-Journal*.

3.

HOW SAVANNAH DIETRICH WAS TREATED IN THIS CASE BY THE COUNTY ATTORNEY'S OFFICE AND THE COURT

From the beginning of the investigation of W.F. on December 26, 2011 until June 26, 2012, there appeared to be no problems or issues involving the invcstigation, proseeution, or this Court. Deteetive Horn, of the Louisville Metropolitan Policc Department, did a thorough investigation and had an in-depth rapport with Savannah Dietrich during the development of this case. Paul Richwalsky, Chief Juvenile Prosecutor of the Jefferson County Attorney's Office, was thoroughly prepared and took his time meeting with and interviewing Savannah Dietrieh. Mr. Richwalsky made sure all the leads in the case were chased down and would not discuss any resolution of this case until the investigation had been completed and Savannah Dietrich had been fully briefed and advised. Savannah Dietrich, or her lawyer's relationship with this Court, changed somewhat after July 3, 2012 when Savannah Dietrich's Publie Defender, Daniel Whitley, was before this Court to diseuss the handling of the Motion to hold her in contempt.[1] On July 5, 2012, Savannah Dietrich filed, pursuant to KRS 26(A).020, a Motion to Disqualify this Court and supported her Motion with her affidavit and one filed by her Public Defendant, Daniel Whitley. An additional request was made to stay the proceedings until the Kentucky Supreme Court Chief Justice Minton ruled on the recusal Motion.

[1] Neither W.F. nor his attorney was present on July 3, 2012 because no Notice had been provided. A Motion is pending before this Court to allow W.F. and his attorney access to the July 3, 2012 Hearing.

This Court voluntarily withdrew as the presiding Judge and Judge McDonald re-entered the proceedings. On July 10, 2012, Chief Justice Minton entered an Order denying Savannah Dietrich's request to disqualify this Court. In his Order, Chief Justice Minton specifically ordered that "the affidavits are insufficient to demonstrate any disqualifying circumstance that required the appointment of a Special Judge. . . ." (Exhibit No. 1). This Order denied Savannah Dietrich's claim that this Court somehow had personal bias or prejudice concerning her, had personal knowledge of disputed evidentiary facts concerning these proceedings, had expressed an opinion concerning the merits of these proceedings and had knowledge of other circumstances in which this Court's impartiality might reasonably be questioned.

Chief Justice Minton had the final say as to the treatment of Savannah Dietrich by this Court. It is crystal clear that Savannah Dietrich's assertions to recuse this Court were insufficient and baseless and her claims to say otherwise were properly rejected. How this Court has treated Savannah Dietrich is not an issue and, therefore, cannot be considered as "good cause" to release W.F.'s Juvenile file

Treatment of Savannah Dietrich by the Jefferson County Attorney's Office

It is difficult to describe or speculate about the relationship Savannah Dietrich had with the prosecution and how she was treated. However, having practiced in Juvenile Court for a number of years and having had to deal with Mr. Richwalsky as a prosecutor, there is a professionalism and an impeccable reputation he brings to the Jefferson County Attorney's Office and this Court. It goes without saying that the credibility and integrity that Mr. Richwalsky has built and earned over the years as a hard-nosed, aggressive, no-nonsense prosecutor is well-deserved.

In response to Savannah Dietrich's Motion to recuse this Court, Mr. Richwalsky filed an Affidavit in blunt and accurate terms explaining the progression of this case and the treatment Savannah Dietrich received. This Affidavit provides mueh clarity and insight as to the poliey and procedure of Mr. Richwalsky in handling the prosecution of this type of case. More importantly, it gives this Court a better understanding of how Savannah Dietrich was treated. (See Exhibit 2).

The Jefferson County Attorney's Office's initial contact with Savannah Dietrich eame shortly after W.F. was arraigned on March 16, 2012 and a meeting was scheduled for April 24, 2012. Present at this meeting was Paul Richwalsky, Detective Horn, Victim's Advocate Debbie Vermillion, Savannah Dietrich and her mother. Savannah Dietrich was interviewed for some time and additional leads were obtained. Letters were sent and/or telephone calls were made whenever there was a Court appearance. Savannah Dietrich met with the prosecution team before and after each Court appearance and she was advised as to the development of the case.

Savannah Dietrich and her mother met with the prosecution team for some period of time on June 13, 2012 and the offer aceepted by W.F. was discussed in depth. "The full and complete offer was discussed." (Exhibit 2, p. 3.) On June 13, 2012, Savannah Dietrieh "the [victim] and her Mother were fully apprised and acquiesced in thc proposed settlement." (Exhibit 2, p. 3.)

On June 18, 2012, Mr. Richwalsky reduced the agreed upon offer to writing and sent it, along with a short letter to W.F. outlining an additional component of the plea requested by Savannah Dietrich. From the meeting on June 13, 2012 until the plea datc of June 26, 2012, there were no attempts made by Savannah Dietrieh to alter, change or reject the offer.

If the *Courier-Journal* is concerned about Savannah Dietrieh's treatmcnt by the Jefferson County Attorney's Office after the Motion to hold her in contempt was filed, there was no

inappropriate behavior. On June 27, 2012 when the Motion to hold Savannah Dietrich in contempt was brought before this Court, thc initial hearing was held in Open Court and on the record. Mr. Riehwalsky indieated that he was a possible witness to the contempt of Savannah Dietrich and rightfully informed the Court. The only decision made by this Court was to notify Savannah Dietrich of the Motion to hold her in contempt and have her present on June 28, 2012. Nothing from the treatment of Savannah Dietrich by the Jefferson County Attorney's Office creates "good cause" to release W.F.'s Juvenile file.

Only the Court can gauge the credibility and veracity or lack of credibility and veraeity of the parties and measure how much weight each should be given or has earned. Savannah Dietrich's treatment by the Jefferson County Attorney's Office during the prosecution of W.F. and subsequent hearings was appropriate. As such, "good cause" to release W.F.'s Juvenile file does not exist.

4.

THE COURT'S REPORTED GAG ORDER RESTRICTING SAVANNAH DIETRICH'S ABILTY TO SPEAK ABOUT WHAT HAPPENED TO HER

Pursuant to Judge McDonald's Order entered July 30, 2012, there was no "Gag Order" issued on June 26, 2012. It was only the requirement that all parties, including Savannah Dietrieh, comply with thc Confidentiality Statutes that are set forth in the Unified Juvenile Code of Kcntucky. The fact that an individual does not like the tone or demeanor of the Court, disagrees with the message the Court has deliverecl, or thinks the Court is speaking directly to them is not grounds to violate the confidentiality proeeedings of Juvenile Court. Simply requiring the parties of this case to abide by the confidentiality requirements of Juvenile Court is the law. Ordering the parties to follow the law is not "good cause" to release W.F.'s Juvenile file.

5.

HOW THIS COURT COULD HAVE ESCALATED TO THE POINT WHERE SAVANNAH DIETRICH WAS FACED WITH CONTEMPT CHARGES FOR COMPLAINING ABOUT BEING VICTIMIZED AND ABOUT HER TREATMENT IN THE JUDICAL PROCESS

In order to address this question, it is important to understand that on two separate occasions, this Court was prompted to explain the confidentiality of Juvenile Court to the parties involved. The first time came during one of the early pretrial conferences; the second time came on June 26, 2012. After W.F. entered his plea, the prosecution team consisting of Paul Richwalsky, Detective Horn and Victim Advocate Debbie Vermillion from the Jefferson County Attorney's Office spoke with Savannah Dietrich outside of Court and explained to her what confidentiality meant and its ramifications if breached. It was Savannah Dietrich who tweeted on Twitter after the June 26, 2012 Court date that prompted a valid response to hold her in contempt for violating the confidentiality proceedings of Juvenile Court.

Judge McDonald advised all parties present on June 26, 2012 of the confidentiality of Juvenile Court. Savannah Dietrich was present in Court and obviously heard the Court's comments and tweeted comments to the contrary. The confidentiality statutes of Juvenile Court prohibit releasing confidential information and there are consequences for such actions.
It is not "good cause" to release W.F.'s file for the filing of a proper motion to hold Savannah Dietrich in contempt for her violation of the confidentiality of Juvenile Court.

The last area of concern that is advanced by the *Courier-Journal* has to do with attacking the principles that are set forth in F.T.P. v. Courier-Journal, 774 S.W.2d 444 (Ky., 1980). The *Courier-Journal*'s claim that W.F.'s right to a fair trial and rehabilitation simply do not matter and should not be taken into consideration is erroneous.

W.F. is entitled to a fair trial. The fact that W.F., or any other juvenile defendant, enters a guilty plea does not mean that the confidentiality of Juvenile Court suddenly evaporates. Were the Court to reject W.F.'s plea or change conditions of the Plea Agreement, W.F. would be allowed to withdraw his plea and proceed to trial. W.F. is entitled to the protection of his confidentiality pursuant to statutes in the Unified Juvenile Code of Kentucky.

The *Courier-Journal* attacks the second prong of F.T.P. by suggesting that rehabilitation through confidentiality is an impossibility because the public knows W.F.'s identity. The identity of W.F. was breached because of the contemptuous acts of Savannah Dietrich in violating the confidentiality of Juvenile Court. Savannah Dietrich may have waived her confidentiality, but she should not be entitled to waive W.F.'s confidentiality and then have the *Courier-Journal* claim "good cause" because of the breach. Rehabilitation of juveniles is of the utmost importance. The firestorm from the *Courier-Journal*'s July 21, 2012 article has slowly, but surely, receded. To allow the *Courier-Journal* access to W.F.'s Juvenile file would only serve to stoke the flames and rekindle the inferno that would truly deny W.F. the opportunity for rehabilitation

Finally, the *Courier-Journal* claims that because of the dissemination of the photographs of Savannah Dietrich that W.F., by his own action, has waived his confidentiality. Contrary to the rumors and misinformation of this case, there has never been any dissemination of photographs of Savannah Dietrich via the internet, Facebook, U-Tube, or any other social media. Furthermore, no photograph was ever texted, downloaded or transferred by any other electronic means. To date, no photograph has ever been produced in any form or media of Savannah Dietrich and a forensic examination of W.F's phone by the Kentucky State Police Lab revealed

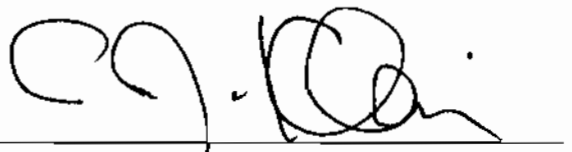
no photographs. W.F.'s actions have not waived his confidentiality and there is no "good cause" to release W.F.'s Juvenile file.

CONCLUSION

W.F. has accepted responsibility for his actions by pleading as charged and is awaiting his disposition. His Juvenile file, including the contempt proceeding(s), should not be made public because of Savannah Dietrich's violation of this Court's Order of eonfidentiality. "Good causc" does not exist to justify the relcasc of confidcntial records when W.F.'s filing of the Contempt Motion was an attempt to preserve his confidentiality. This case is not an example of whcre the public's intcrest trumps W.F.'s confidentiality. There is no public interest goal that would be satisfied by this Court releasing W.F.'s Juvemile file.

For all the reasons and explanations previously stated, "good causc" to release W.F.'s Juvenile file pursuant to KRS 610.340(1)(a) simply does not exist. The *Courier-Journal's* request for such reeords should be denied.

Respectfully submitted,



CHRISTOPHER J. KLEIN
600 West Main Street, Suite 300
Louisville, KY 40202
(502) 589-6190
COUNSEL FOR W.F.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed, first class postage prepaid, on this, the 10th day of August, 2012, to:

Hon. Paul Richwalsky
Assistant Jefferson County Attorney
600 West Main Street
Louisville, KY 40202

Hon. David Mejia
455 South 4th Street, Suite 382
Louisville, KY 40202

Hon. Thomas Clay
462 South 4th Street, Suite 101
Louisville, KY 40202

Hon. Jon L. Fleischaker
Hon. Jeremy S. Rogers
Dinsmore & Shohl, LLP
101 South 5th Street, Suite 2500
Louisville, KY 40202

CHRISTOPHER J. KLEIN

Supreme Court of Kentucky

FROM THE 30TH JUDICIAL DISTRICT
JEFFERSON DISTRICT COURT, JUVENILE DIVISION
CASE NO. 10-J-701-053

IN RE: SAVANNAH DIETRICH, A CHILD

ORDER DENYING REQUEST TO DISQUALIFY JUDGE

This matter is before the Chief Justice upon the certification of the Clerk of the Jefferson Circuit Court of the Affidavits of Savannah Dietrich and Daniel E. Whitley, counsel for Savannah Dietrich, which seek disqualification of the Honorable Angela McCormick Bisig, District Judge for the 30th Judicial District, Division Twelve, from presiding in the above-styled action.

Upon review, it is ORDERED that the affidavits are insufficient to demonstrate any disqualifying circumstance that would require the appointment of a special judge under Kentucky Revised Statutes (KRS) 26A.020.

The request to disqualify is denied without prejudice of any party to seek appellate review after entry of a final judgment.

The Clerk of the Jefferson Circuit Court shall place a copy of this order in the record of this case and shall serve copies on parties or their counsel.

Entered this 10th day of July 2012.

CHIEF JUSTICE

Copies to: Clerk, Jefferson Circuit Court
Angela McCormick Bisig, Chief Regional District Judge

NO. 10J701053 (1 of 2) Bill

JEFFERSON DISTRICT COURT
JUVENILE SESSION
DIVISION #88

NOTICE – MOTION – ORDER

IN THE INTEREST OF:

SAVANNAH DIETRICH, A CHILD

* * * * *

NOTICE

FILED IN CLERK'S OFFICE
JEFFERSON CIRCUIT CT.
2012 JUL -2 P 4:17
CLERK
BY _____ D.C.

TO: Honorable Mike O'Connell
Jefferson County Attorney
600 W. Jefferson Street
Louisville, KY 40202

Honorable Dan Albers
Assistant Jefferson County Attorney
600 W. Jefferson Street
Louisville, KY 40202

Please take notice that the following motion will be made on Tuesday, the 3rd day of July, 2012, at 9:00 a.m.

MOTION FOR BILL OF PARTICULARS

* * * * *

Comes Savannah Dietrich, by counsel, Daniel E. Whitley, pursuant to RCr 6.22, James v. Commonwealth, Ky., 482 S.W.2d (1972), and other relevant case law to order the Commonwealth to provide defense counsel with a specific bill of particulars. In support of this motion, Savannah states as follows:

1. A.Z. and W.F. are juveniles who were charged with the offenses of Sexual Abuse First Degree and Voyeurism, of which Savannah Dietrich was the victim. The charges stemmed from an incident that took place in August of 2011. While Ms.