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ATTORNEY GENERAL OF WASHINGTON

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November 5, 2008

Honorable Ronald S. Zirkle
Yakima County Prosecuting Attorney
128 North Second Street, Room 329
Yakima, WA 98901

Re: Criminal investigation of Jacqueline K. Walsh & Steven Witchley

Dear Mr. Zirkle:

On December 31, 2007, the Attorney General's Office (AGO) received the above-referenced referral for consideration of criminal charges pursuant to RCW 43.10.232. The referral involves two Seattle attorneys who were appointed to represent a Yakima County defendant, Jose Sanchez, Jr. Sanchez was charged with the execution-style murders of Richard Causor and Causor's three-year old daughter, Mya. Sanchez Jr. was further charged with two counts of attempted murder in the first degree for shooting Michelle Kublic, Mya Causor's mother, in the head while Kublic held two-year-old Angelica Causor. Kublic and Angelica survived. Prior to trial, Walsh and Witchley paid to ferry a crucial state's witness, a juvenile, out of state. The trial court found ethical violations and removed Walsh and Witchley from the case. You asked that the AGO review the case to determine whether any criminal charges should be brought against Walsh and Witchley.

An investigation by law enforcement focused directly on the conduct of Walsh and Witchley never took place. This is partly because the focus of Yakima PD at the time was the murder prosecution. It has also been nigh impossible to pry from the trial court important documents that might shed more light on exactly what Walsh and Witchley did, and whose funds they used to do it with.

I have reviewed some of the pleadings from *State v. Sanchez* (Yakima County #05-1-00459-8), the transcript from the hearing where the court ultimately disqualified Walsh and Witchley for ethical violations, excerpts of witness testimony from the trial transcript, and many of the police incident reports from the murder investigation (Yakima PD #05-02694), to include interviews of the child witnesses Walsh and Witchley ferried out of state prior to trial.

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I have reviewed the materials provided and considered them at length. For the reasons set forth below, the evidence does not rise to the level necessary to file criminal charges despite the wrongful conduct committed by Walsh and Witchley. Accordingly, the AGO declines to file criminal charges. The facts are summarized below.

On February 20, 2005, Jose Sanchez, Jr. ("Junior Sanchez") and his friend Mario Mendez determined to rob Ricky Causor. Causor lived in Yakima with his girlfriend, Michelle Kublic, and their two children: Mya, age 3, and Angelica, age 2. Causor was known to be heavily involved in the sale of controlled substances, particularly marijuana. Junior Sanchez believed that Causor would have large quantities of drugs and cash on hand. Sanchez enlisted Mendez to help rob Causor. Sanchez and Mendez drove to Causor's residence that night and parked outside. They brought masks to cover their faces.

Michelle Kublic went to Safeway that night. When she arrived home, Sanchez and Mendez were waiting for her. Sanchez chose not to wear his mask. Sanchez and Mendez got out of Sanchez's truck, walked in front of Kublic's vehicle, and ordered her out of her vehicle. Sanchez took Kublic by the hair, walked her up to the front door, and directed her to tell Ricky Causor to open the door. Causor answered the door. Kublic pushed Causor into the house and tried to shut the door. Kublic grabbed the gun and tried to wrest it from Sanchez. Causor opened the door and directed Kublic to stop resisting. Causor told Kublic, "Don't do nothing dumb 'cause we have babies in the house. We'll just give 'em all the money we have."

Sanchez ordered Kublic to get down on her knees. Kublic held her children underneath her while she knelt on the floor. Causor brought out cash and bags of marijuana and set them down for Sanchez. Causor then joined Kublic and their children on the floor. The family huddled together with Causor holding three-year-old Mya and Kublic holding two-year-old Angelica.

As Mendez and Sanchez left the house with the proceeds of the robbery, Sanchez determined to kill the family. Sanchez did not wear the mask he brought and both Causor and Kublic knew him and could identify him. Sanchez determined to leave no witnesses behind. Sanchez stood behind Causor and fired three shots into his head as he knelt on the floor cradling his daughter. Two of these shots passed through Causor's head and struck Mya Causor. Mya Causor suffered fatal gunshot wounds to her head and abdomen.

Sanchez then turned to Michelle Kublic as she knelt on the floor holding her daughter Angelica. Sanchez shot Kublic in the neck and left her for dead, exiting the house.

On February 23, 2005, three days after the murders, Sanchez was apprehended and booked into the Yakima County Jail. Mendez remained at large. Mendez was afraid that Sanchez would kill him because Mendez was also a witness to the murders. Mendez fled to Mexico.

On February 28, 2005, the State charged Sanchez and Mendez with numerous counts arising from the home-invasion robbery/homicides, including two counts of aggravated murder and two

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counts of attempted murder in the first degree. The Director of the Yakima County Department of Assigned Counsel (DAC), Daniel Fessler, spoke briefly with Sanchez and appointed an attorney contracted with DAC to represent Sanchez until a death penalty qualified lawyer could be appointed.¹

A warrant was issued for Mendez's arrest.

On April 22, 2005, Seattle attorneys Jacqueline Walsh and Steven Witchley appeared to represent Jose Sanchez, Jr. Walsh and Witchley were appointed counsel and were funded with public money.

On October 25, 2005, Mario Mendez was apprehended crossing the border from Mexico to California. Mendez was detained at a federal detention center in San Diego on federal immigration charges, as well as the murder warrant from Washington State. A federal public defender, Norma Aguilar, was appointed to represent Mendez on the federal immigration charge. Aguilar and a member of the Mexican consulate advised Mendez not to discuss his criminal matters with anyone.

Daniel Fessler was charged with the responsibility of obtaining representation for indigent defendants in Yakima County. Fessler was advised on October 25, 2005, that Mendez had been arrested in California. Mendez was charged with aggravated murder and the prosecutor had not yet determined whether to seek the death penalty. Fessler was obligated to find a lawyer qualified under SPRC 2 to represent Mendez. Fessler was further advised that Yakima Police were en route to San Diego to contact Mendez.

Fessler contacted attorney Todd Maybrow of Seattle to inquire as to his availability to represent Mendez. Maybrow informed Fessler that Walsh and Witchley were thinking of traveling to San Diego to talk to Mendez before he was returned to Yakima. Maybrow expressed interest in representing Mendez, but could not commit to it without further arrangements.

Another attorney, Cassandra Stamm, was also in contact and expressed interest in representing Mendez. Stamm, too, was aware that Walsh and Witchley wanted to fly to San Diego to talk to Mendez. Stamm told Walsh and Witchley that she did not want them to interview Mendez.

Maybrow urged Fessler to file a notice of appearance on behalf of Mendez so that Walsh and Witchley would be precluded by RPC 4.2(a)² from interrogating Mendez. Fessler declined to do so because he was unsure if Mendez already had counsel or might retain counsel. Fessler could

¹ The Superior Court Special Proceedings Rules (SPRC) require that when a defendant is charged with aggravated murder and may face the death penalty, the trial court must appoint two lawyers on a list approved by a panel created by the Supreme Court. SPRC 2.

² "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter ..."

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not ascertain those facts without first talking to Mendez. Fessler was also concerned that his office might have a conflict of interest by representing Mendez.

Sometime between October 25 and November 2, 2005, Walsh appeared unexpectedly at Fessler's office in Yakima. Walsh knew full well that any attorney would instruct Mendez not to speak to Walsh or Witchley. She also knew that neither she nor Witchley could talk to Mendez if he was appointed counsel due to the prohibition against contacting represented persons. To avoid that scenario, Walsh demanded that Fessler refrain from filing a notice of appearance for Mendez. Walsh told Fessler that it would be inappropriate for Yakima County DAC to enter a notice of appearance because Fessler had contact with the co-defendant, Sanchez, when he was first arrested. The contact to which Walsh referred involved Yakima County entering a plea of not guilty for Sanchez and advising him that they would find him a qualified lawyer. Walsh implied during her meeting with Fessler that she would file a bar complaint if Fessler entered a notice of appearance for DAC. Fessler asked Walsh if she would agree not to contact Mendez if he agreed not to enter a notice of appearance. Walsh refused. Fessler ultimately determined not to enter a notice of appearance. Fessler felt pressured by Walsh and later described this encounter with Walsh as "not cordial."

Witchley and his investigator, Larry Freeman, flew to San Diego, presumably after receiving the "all clear" from Walsh. On November 3, 2005, Witchley gained access to the federal detention center. It is unknown what explanation Witchley gave federal authorities in order to enter the secure facility. Witchley was admitted and he asked to speak to Mendez. According to Mendez, the federal corrections officers contacted him and said, "Your lawyer is here." Witchley never contacted Mendez's federal attorney, Norma Aguilar, to let her know he was going to talk to Mendez. Mendez began talking to Freeman and Witchley and quickly realized that they were not his attorneys; rather, they worked for Junior Sanchez, whom Mendez feared.

Witchley pressed Mendez to talk about the Causor homicides. Mendez declined. Witchley pressed Mendez to state that Manuel Sanchez, Junior Sanchez's uncle, was the person who committed the Causor homicides. Mendez declined. Witchley represented to Mendez that he would try to "help" Mendez's lawyers get ready for the trial. Witchley told Mendez that Junior Sanchez bore him no ill will.

Witchley and Freeman appeared at the federal detention center the next day, November 4, 2005. Witchley again pressed Mendez to talk about the Causor homicides without the benefit of counsel and continued his efforts to persuade Mendez to say that someone other than Junior Sanchez was responsible for the murders. Mendez again declined.

On November 7, 2005, the Yakima County Superior Court entered an order authorizing counsel at public expense for Mario Mendez. Mendez waived extradition and Yakima County police flew to San Diego to retrieve Mendez.

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On the evening of November 15, 2007, Mendez was booked into the Yakima County Jail pending his arraignment on murder charges.

At 9:00 a.m. the next morning, November 16, 2007, Witchley and Freeman arrived at the jail to talk to Mendez before the court had an opportunity to formally appoint a lawyer for Mendez. Witchley again pressed Mendez to talk about the murders. Witchley pressed Mendez to deny that Sanchez was the shooter. Witchley fed Mendez bits of information both true and untrue in an effort to persuade Mendez to talk. Mendez declined.

On November 17, 2005, Mendez was arraigned on aggravated murder charges. On November 18, 2005, Mendez was appointed counsel qualified under SPRC 2. Walsh and Witchley could no longer talk to Mendez.

Once efforts with Mendez failed, Walsh and Witchley turned their attentions to their client's girlfriend, Christina Carrillo (aka Roberta Carrillo). Christina was Junior Sanchez's girlfriend at the time of the murders. Christina was also the mother of Sanchez's infant daughter, Vianay. Christina Carrillo was 16-years-old in November/December 2005. Christina had a brother, Ramiro Jr. (11) and a sister, Adriana (15). The mother of the three siblings, Luz Carrillo, lived in Yakima with her boyfriend Albert Vasquez. Junior Sanchez spent a lot of time at this house during the time preceding the murders. The planning of the robbery took place at this residence and the murder weapon was kept there after the murders.

Walsh and Witchley knew that Yakima PD had not taken a detailed statement from either of the children. During November and December 2005, Walsh, Witchley, and Freeman curried the friendship of the children by talking to them frequently and buying them meals.

Through discovery and their own dealings with Christina Carrillo, Walsh and Witchley knew that Christina Carrillo could offer extremely damaging testimony against Junior Sanchez. Christina Carrillo had personal knowledge that would establish that Sanchez's .45 handgun was the gun used to kill the Causors and wound Michelle Kublic. Christina Carrillo was acutely familiar with the murder weapon as Sanchez often gave it to her to hold so that if he was ever searched by police it would not be in his possession. Christina Carrillo knew that Junior Sanchez had recently committed other armed robberies. Christina Carrillo was present when Sanchez and his friends discussed their plans to rob Causor on the night of the murders. The morning after the murders, Sanchez came to Christina's home and gave her the .45 he used to execute the Causors.

Christina's little brother, Ramiro Jr., also saw Sanchez come to their home the morning after the murders, and he saw Christina in possession of the .45 used to murder the Causors.

The father of the three Carrillo children, Ramiro Carrillo, Sr., resides in Stockton, California. Carrillo Sr. has sole custody of the children by California decree. Several years prior to the Causor murders, Luz Carrillo requested of Ramiro Sr. that the children be allowed to live with

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her in Yakima. Luz Carrillo had no enforceable right to custody or visitation. Nevertheless, Ramiro Sr. acquiesced and allowed the three children to return to their mother's custody in Yakima.

Walsh and Witchley determined to get Christina Carrillo out of Yakima. Walsh and Witchley contacted Ramiro Sr. in California and offered to fly the children back to him. Ramiro Sr. believed that Walsh and Witchley were attorneys for the State of Washington looking out for the welfare of his children. Ramiro Sr. agreed to receive the children. Walsh and Witchley purchased airline tickets for Ramiro Carrillo Jr., Adriana "Reyna" Carrillo, Christina Carrillo, and Sanchez's daughter Vianay. Walsh and Witchley did not tell the prosecutor, Mendez's defense team, or the court that they had spent personal finances to send important witnesses out of state. Walsh and Witchley never reported to Child Protective Services or any other agency that there was a legitimate concern for the welfare of the children.

The Yakima Police detectives who investigated the Causor homicides learned that the Carrillo children were ferried out-of-state when Luz Carrillo contacted police to report that her children were missing. Police investigated and soon discovered that the children were in Stockton, CA, with their father. Police further ascertained that the father had legal custody of the children.

In January 2006, Yakima Police Detectives Dave Kellett and Uriel Mendoza flew to California and interviewed Christina Carrillo, Adrianna Carrillo, and Ramiro Carrillo, Jr. None of the children stated that the defense attorneys told them to say anything false or withhold information, or that the defense attorneys had suggested that they absent themselves from the trial. The children gave statements to the police concerning their knowledge of the events surrounding the Causor murders. Yakima Police assisted Mendez's investigator in interviewing the children in California as well. Later, after Walsh and Witchley's conduct came to light, Walsh and Witchley drafted declarations for the children which declared that they all had wanted to go to California and Walsh/Witchley engaged in no wrongdoing. The children signed the declarations.

Counsel for Sanchez's co-defendant, Mario Mendez, discovered what Walsh and Witchley had done with the Carrillo children. They were also aware of the contacts Witchley had with Mendez before Mendez had met his appointed counsel.

In September 2006, Mendez filed a motion to disqualify Walsh and Witchley for their conduct in ferrying the Carrillo witnesses out of the state and contacting their client prior to arraignment. Mendez alleged that Walsh and Witchley's conduct was inappropriate and created a conflict of interest that precluded them from representing Sanchez at the jury trial.

On November 17, 2006, the trial judge held a hearing to address all of the issues surrounding the inappropriate conduct alleged by Mendez. The court asked Walsh and Witchley for an

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explanation of their conduct related to the children. Walsh³ and Witchley claimed that they were simply looking out for the welfare of the children. Walsh and Witchley asserted that the children were living in a poor and unsafe environment in Yakima and they determined to spend their own money to send the children to a better place 700 miles away from the Yakima County courtroom where their client would be tried for aggravated murder. Walsh and Witchley claimed that the fact that Christina Carrillo was a crucial State's witness had nothing to do with their actions. Walsh and Witchley "emphatically denied" that any misconduct occurred. Walsh and Witchley went so far as to claim to the court that they took the actions that they did "hoping that witnesses would be able to stay alive long enough to testify in this trial." Walsh and Witchley trumpeted their duty to "zealously advocate" for Sanchez.

The trial judge asked Walsh and Witchley why, if their sole concern was the well-being of the children, did they not report the matter to Child Protective Services? Walsh and Witchley had no answer to this very simple but pointed question, other than to describe the alternative course of action they decided to take: fly the children 700 miles away from the Yakima County Courthouse. Walsh and Witchley refused to apologize for anything they did and told the court they were "embarrassed" for anyone who accused them of wrongdoing.

On December 1, 2006, the court issued a written opinion. Walsh and Witchley's hollow explanation and attempt to hide behind "zealous advocacy" did not satisfy the trial judge. The trial court summarized the problems with their conduct in its written decision removing them from the case:

Suppose that one or more of the Carrillo children are called to testify at trial and give evidence that departs from the statements they have given the [Yakima Police Department]? The issue of their bias as witnesses is surely going to take some momentum from the fact that Walsh and Witchley removed them from the "dangerous" conditions at the Luz Carrillo residence and paid for them to fly to California to be with their father. What additional information might the Carrillo children have given to YPD if they had not been removed from the state or if they had not had such close, continuing contact with Walsh and Witchley? Are Walsh and Witchley then going to testify that they did nothing to influence the testimony? If they don't so testify, are they going to be representing their client in a manner consistent with his best interest?

Further, Walsh and Witchley's act of paying for all or part of the airfare and other expenses of the Carrillo children is tantamount to a prohibited transaction under RPC 1.8(e).

³ Walsh did not speak at the hearing with respect to the children; however, she later filed a declaration adopting Witchley's statements at the hearing as her own.

