THEODORE R. KULONGOSKI
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September 2, 1993

Joseph Lee Valek
SID #7293805
3405 Deer Park Drive SE
Salem, OR 97310

Re: Petition for Public Records Disclosure Order
Multnomah County Trial Court Records

Dear Mr. Valek:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on August 26, 1993, again asks the Attorney General to direct Douglas Bray, the Multnomah County Court Administrator, to make available certain records concerning case number C 90-07-34254. For the reasons that follow, we respectfully deny your petition.

The Attorney General may order a state agency to disclose records only where the agency has first denied a request for the records. ORS 192.450(1). Mr. Bray informs us that he has not denied your request, but has twice furnished you with the only requested records that are in his custody, once on May 13 and again on August 20, when he replied to your request of August 3, 1993.

The Public Records Law does not require a public body to create records to satisfy a public records request. *Attorney General's Public Records and Meetings Manual* 3 (1989). Your August 23 petition asks for "proof" that there were seven members of the grand jury present during the proceedings concerning your indictment

and "proof" that the state used its indictment evidence at trial. Mr. Bray is not obligated under the Public Records Law to prove these facts. He is obligated only to provide to you the records in his possession. To the extent you seek records that the Court Administrator does not have, the Attorney General has no authority to order disclosure. Accordingly, your petition is denied.

As we indicated in the order on your prior request, the Attorney General cannot order the District Attorney to produce records that may be in the District Attorney's possession. You must request those records directly from the District Attorney and may have any dispute about production of those documents reviewed by the circuit court.[1]

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA00DD3.W51

c: Linda Zuckerman, Legal Counsel
Office of the State Court Administrator
Supreme Court Building
1163 State St.
Salem, OR 97310

Douglas M. Bray
Multnomah County Trial Court Administrator
Multnomah County Courthouse
1021 SW Fourth Ave.
Portland, OR 97204

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[1] This office cannot advise you concerning Judge Erstgaard's ability to order the Multnomah County District Attorney to produce records. We are prohibited by law from giving legal advice to private citizens.