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February 1, 1989

Lars Larson, Reporter
KPTV-12
735 S.W. 20th Pl.
P.O. Box 3401
Portland, OR 97208

Re: **Petition for Public Records Disclosure Order; Multnomah County Circuit Court Records**

Dear Mr. Larson:

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 January 26, 1989, asks the Attorney General to order the Multnomah County Trial Court Administrator to make available for inspection:

> "Exhibits which Circuit Court Judge Philip Abraham made part of the official court record in a bail hearing on January 24, 25, & 26, 1989 which involved defendants Kenneth M. Mieske, Kyle H. Brewster, and Steven R. Strasser. These exhibits include photographs and other documents."

Judge Abraham denied your request to inspect those records. For the reasons that follow, those records are subject to a "claim of right to withhold disclosure by an elected official." ORS 192.480. That statute, therefore, requires the Attorney General to decline consideration of your petition.

ORS 192.480 provides in relevant part:

> "In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims

> the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General * * *, or if a petition is filed it shall not be considered by the Attorney General * * * after a claim of right to withhold disclosure by an elected official."

In this case, it is unnecessary to determine the custodian of the exhibits. Arguably, the custodian could be the Multnomah County Circuit Court or the Oregon Judicial Department as a public agency, the State Court Administrator, the circuit judge himself, or the Chief Justice of the Supreme Court as the officer with supervisory authority over the Oregon court system. See ORS 1.002(1). ORS 192.480 requires the Attorney General to decline consideration of a petition to disclose a public record "as to which an elected official claims the right to withhold disclosure," regardless of whether that official has custody of the record.

Judge Abraham has stated that he denied disclosure of the exhibits in order to minimize pretrial publicity and thus protect the defendants' constitutional right to a fair trial. The judge is an elected public official. See Or Const Art VII (Amended), section 1. Thus, an elected official has claimed the legal right to withhold disclosure of these exhibits. Under these circumstances, ORS 192.480 prohibits the Attorney General from considering your petition.

Very truly yours,

James E. Mountain, Jr.

JAMES E. MOUNTAIN, JR.
Deputy Attorney General

JEM/RDW:cr
0534Y
cc: The Honorable Philip Abraham
Circuit Court Judge
Multnomah County Courthouse
1021 SW 4th
Portland, OR 97204

Linda Zuckerman
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