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Sent: Tuesday, February 11, 2020 4:13 PM

To: Garcia-Roberts, Gus <GGarciaRob@usatoday.com>; Murray, Elizabeth <emurray2@freepressmedia.com>

Cc: Clark, Charity <Charity.Clark@vermont.gov>; Purdy, Linda <Linda.Purdy@vermont.gov>

Subject: Response to Public Record Request for Transcript

Dear Mr. Garcia-Roberts and Ms. Murray, I have attached our response to your request for the original transcripts in the State v. Forte matter. Thank you, Linda

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Feb. 11, 2020

VIA EMAIL

Mr. Gus Garcia-Roberts
Reporter
USA TODAY
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Ms. Elizabeth Murray
Reporter
Burlington Free Press
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Re: Public Records Request

Dear Mr. Garcia-Roberts and Ms. Murray:

This letter is in response to your request dated January 28, 2020, to obtain a copy of the trial transcripts in the *State of Vermont v. Leonard Forte* criminal case made pursuant to Vermont's Public Records Act, 1 V.S.A § 315-320.

On January 28, 2020, this office received an email with the following request: "We are hoping to obtain a copy of the original trial for Leonard Forte."

As you know, the case was tried in the Bennington Superior Criminal Court back in 1988. The original transcript, and any release of it, clearly falls within the purview of the Bennington Superior Court, Criminal Division, who is the custodian of the original record. This office had portions of copies of the transcripts which were attached to certain filings during the two appellate filings concerning the post-trial case. Any requests for the original transcripts should be directed to the Superior Court.

It is our concern that the public release of the trial transcript could reasonably be expected to interfere with the investigation and prosecution of this case. The criminal jury trial occurred over three decades ago and this is the document we are using to investigate and prosecute the case at this time. The public disclosure of this material could lead to potential jurors having read previous testimony of witnesses and cross examination that may or may not be pursued in the retrial. Also, some of the witness's testimony may be read into the record due to their unavailability and we cannot risk having that testimony publicly disclosed before being admitted

into evidence by the trial Judge. Mr. Forte is entitled to a fair trial. This protection flows from the Sixth Amendment guarantee that the evidence developed against a defendant comes from the witness stand, where there is full judicial protection of the right of confrontation, cross-examination, and counsel. Therefore, we are denying your request at this time based on the following relevant Vermont Public Records Act exemptions:

Pursuant to 1 V.S.A. § 317(c)(5)(A), records dealing with the investigation of a crime are exempt from production where production “(i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair or an impartial adjudication;” or “(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy”. At this time, the release of the transcripts would interfere with the enforcement proceedings as we are reconstructing a prosecution that occurred over thirty years ago and witnesses are being located and interviewed. Further, release of the transcripts could unfairly influence potential jurors which can reasonably be expected to deprive Mr. Forte and the State of Vermont of a fair and impartial adjudication. Releasing the transcripts could also be an unwarranted invasion into the personal privacy of the victim and other witnesses in the case. This Office remains committed to protecting the personal privacy of those involved in the investigation and prosecution of this case. In particular, the victim who must testify concerning sexual assaults that occurred thirty years ago and who is presently meeting with investigators, prosecutors and a victim’s advocate. Given the length of the delay since the original trial and the sensitive nature of the allegations, we must underscore the need for the integrity of the process and respect for the personal privacy of the victim and witnesses.

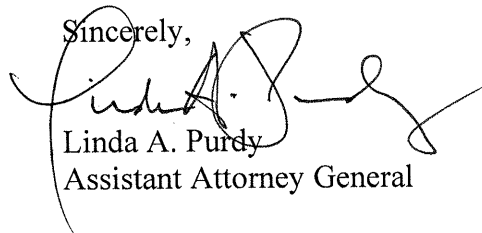
Finally, your request seeks records being maintained in an ongoing criminal proceeding and releasing them would cause our office to violate the following Vermont Rules of Professional Conduct which exempts the records pursuant to 1 V.S.A. § 317(c)(3), in that:

- The request seeks records that if disclosed to the public may be interpreted or viewed as the prosecution providing extrajudicial statements that will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. *Vermont Rules of Professional Conduct 3.6(a)*.

- The request seeks records that may be interpreted as the prosecution making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused. *Vermont Rules of Professional Conduct 3.8(f)*.

We hope the above information is helpful to you. To the extent you feel the records have been wrongfully withheld, you may appeal to Deputy Attorney General Joshua Diamond.

Sincerely,



Linda A. Purdy
Assistant Attorney General