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STATE OF VERMONT  
OFFICE OF THE CHITTENDEN COUNTY STATE'S ATTORNEY

August 30, 2011

Catherine Gattone  
C/O: Supreme Court Docket Clerk  
109 State Street  
Montpelier, VT 05609

Re: In re Appeal of Application for Search Warrant, Docket No. 2010-479

Dear Cathy,

The Court should strike the Defender General's August 23 correspondence from the record and disregard the newspaper article mentioned in that correspondence.

Under the guise of the appellate rule allowing for the submission of "supplemental authorities," the Defender General improperly attempts to present new (and inadmissible) evidence to the Court. V.R.A.P. 28(i) permits a party to submit "pertinent and significant authorities" to the Court. In no sense is the Burlington Free Press article cited by the Defender General such an "authority." See Black's Law Dictionary 52 (Pocket ed. 1996) (defining authority as "[a] judicial or administrative decision taken as precedent" and, alternatively, "[a] source, such as a statute, case, or treatise, cited in support of a legal argument"). In fact, the Defender General does not even cite it as such. Rather, the Defender General seeks to have the Court consider as evidence statements allegedly made by Detective Michael Warren to the newspaper reporter. This is a clear violation of the unquestioned principle that the Court cannot consider evidence that is not in the record. See, e.g., *Hoover v. Hoover*, 171 Vt. 256, 258, 764 A.2d 1192, 1193 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). Moreover, this evidence is not admissible, as the article is hearsay and falls under no recognized exception. Further, the statements that the reporter credits to Detective Warren are double hearsay and similarly inadmissible. And they are inaccurate: the computer has not been searched and, while the police have obtained evidence pertaining to this case, no resident of the home from where the computer was seized has been ruled out as a suspect.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew R. Strauss".

Andrew R. Strauss  
Deputy State's Attorney

Cc: Eric Gulfield  
Defender General  
ACLU Vermont  
Attorney General