



February 8, 2008

Confidential--Attorney-Client Privilege

The Honorable Bob Apple, Spokane City Council
The Honorable Steve Corker, Spokane City Council
City of Spokane Municipal Bldg., Fifth Floor
808 West Spokane Falls Blvd.
Spokane, WA 99201

**Re: O. Yale Lewis Documents
Legally Privileged Communication**

Gentlemen:

We would like to update you on our progress toward making a "release plan" in connection with the captioned documents. We also wish to provide some cautionary legal advice regarding potential liability; further, we seek your cooperation and patience with our efforts to chart the right course of action.

At the outset, it is helpful to briefly summarize the legal doctrines which are implicated by the documents in question. First, the "work product" rule is one of discovery, and addresses documents prepared in anticipation of litigation by or on behalf of a party. The rule directs Courts to protect against the disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney. The work product "privilege" belongs to both lawyer and client. In simple terms, it takes both to waive it. Neither the lawyer nor the client may waive it unilaterally.

Secondly, the "attorney-client" privilege speaks to communications between lawyer and client, and in particular, to advice and counsel rendered to the client by the lawyer, as well as client communications upon which any legal advice is based. This privilege is hundreds of years old, and is vigilantly guarded by the Courts as being fundamental to our legal system. The attorney-client privilege belongs to the client and only the client. It cannot be waived by the lawyer.

As you know, Mr. Lewis (former Special Counsel for the City) sent a box of documents to Mayor Verner on or about January 11, 2008. Shortly thereafter, we provided them to you at your request. It is our understanding that you have both received repeated requests for copies of all the documents in question. We have asked that you not do so at this time.

We are in the process of studying the subject documents. This review reveals that they fall into different categories. Several of the papers are pleadings and other documents which have been filed with various Courts, or have otherwise been previously circulated in the public domain. A separate set of documents constitute attorney work product (thoughts, impressions, conclusions and strategies of a lawyer).

Yet another category of documents would be those which are clearly subject to the attorney-client privilege. Several such documents are, in fact, accurately so designated by the author of them. In the context of these documents, the lawyer is Mr. Lewis, and the client is most certainly the corporate entity of the City of Spokane, and quite possibly its "officers and directors" (the Mayor and Council at a minimum, and perhaps others). A number of the papers in question are probably best characterized as implicating both the work product rules and the attorney-client privilege.

Much of the correspondence contained in the package of documents constitutes an ongoing debate among the Mayor and two outside lawyers for the City as to what each believed at the time (the year 2001) to be the best strategy to pursue in pending litigation. The question being debated is one which could be debated without end by any number of lawyers who would never unanimously agree. A few of the documents are of a different nature. They may be somewhat more sensitive for a number of reasons.

Against the foregoing backdrop, we wish to make it clear that the attorney-client privilege in this context belongs to the City of Spokane, a municipal corporation, through its decision-making officials. With regard to the waiver or non-waiver of the privilege, the decision is to be made by either the Mayor or the City Council, or perhaps both in concert, but not by any one individual. Our research on this question is underway.

Because of the content of some of the documents in question, we have concerns that the precipitous, "ad hoc" release of certain documents would run the risk of creating liability on the part of the City and any person who might choose that course of action. We counsel against doing so.

Ultimately, of course, the documents will or will not be released. In any event, careful and methodical consideration of all possible consequences of either course of action must occur before an informed and prudent decision can be made.

Of note is the fact that we are inclined to alert persons mentioned in the documents to the possibility of their release (if that path is chosen), thereby giving each of them a fair opportunity to intervene if desired. This could involve interaction with over a dozen people, some of whom may be difficult to contact. We must also consider the broader effect of releasing the subject documents in light of a Federal Court confidentiality order which remains in place today.

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This matter is complex, to say the least. We stand ready to answer any questions you might have. We appreciate your desire to conduct your office with openness and candor toward our citizens. We share that philosophy; however, we are also charged with protecting the legal interests, both long and short term, of the City. We appreciate your support and cooperation in that effort. As mentioned, it is wise for the decisions discussed herein to be made in an orderly, methodical and collaborative way with careful consideration of the law and its possible consequences.

Thank you very much for your consideration of these comments.

Best Regards,

A handwritten signature in black ink, appearing to read 'J. Craven', written over a horizontal line.

James S. Craven

cc: Mayor Mary Verner
President Joe Shogan
City Council Members
Ted Danek
Mark Earley