

Typewritten charges for recall of Spokane County Prosecutor Steve Tucker.

Prosecutor Steve Tucker has committed the following acts of malfeasance, misfeasance and violations of his oath of office during his tenure as Spokane County Prosecutor. It should be noted that, according to law, felonies committed within the City of Spokane are the jurisdiction of and prosecuted by the Spokane County Prosecuting Attorney. Consequently, in relation to three of the four charges listed below, Prosecutor Tucker had a duty to be involved in all crimes that carry the potential to be felonies, yet with that knowledge, Prosecutor Tucker appears to have violated, at the least two sections contained in the Revised Code of Washington, namely:

1) RCW 9A.76.050 Rendering criminal assistance – As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person “renders criminal assistance” if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime... he conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person.

and

2) RCW 9A.80 Revised Code of Washington (Abuse of office 9A.80.010 Official misconduct) which states: (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

(a) He or she intentionally commits an unauthorized act under color of law; or

(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.

Official misconduct is a gross misdemeanor

Allegation 1. This is following a statement from retired Police Detective Ron Wright attesting to a violation of malfeasance, misfeasance and a violation of his oath of office by Prosecutor Steve Tucker at a reelection rally for public employees:

I, Ron Wright, am a licensed private investigator in the State of Washington (No. 3387) DBA Ron Wright Investigations LLC, 505 W. Riverside Ave., Ste. 550, Spokane, WA 99201. I am a retired police detective having served almost thirty-five years at Riverside CA, PD. I have a California POST Advance Certificate. I have a master of administration degree from the University of California, Riverside, and a bachelor in political science from the California State University, Fullerton.

During the summer of 2011, I learned from an undisclosed source that during a campaign speech he gave at a political rally County Prosecutor Steve Tucker said he would not prosecute police officers. Later, during a conversation with Spokane City Council member Bob Apple, Apple said he was present at a labor rally a few years ago and heard Steve Tucker make such a statement to the audience.

Upon further research, I found this column by *Spokesman-Review* political reporter Jim Camden, “Incomplete ballots tell interesting story,” dated October 1, 2006: . . . “Perhaps a bigger deal was that Republican Prosecutor Steve Tucker and Republican Sheriff Ozzie Knezovich both received and accepted an invitation to the Spokane Labor Council rally last week at the fairgrounds, where they got the same opportunity to speak and glad-hand as most Democratic candidates. . . This would correspond to the General Election of November 2006 when Steve Tucker was standing for election for his second term of office as County Prosecutor.”

On November 30, 2011 Councilman Bob Apple provided me with this statement: “Every October the local labor council has an open union meeting for all labor members out at the fairgrounds and at these meetings some political office candidates are invited to give a speech. It was at one of these events a few years ago that candidate Steve Tucker and as I heard it specifically stated that he would not prosecute public employees.”

For summation it appears Spokane County Prosecutor Steve Tucker basically told a group of his potential supporters that they would be immune from prosecution if they committed a crime.

Allegation 2. In 2006, Spokane County Prosecutor Tucker announced he would file no criminal charges against a former Spokane firefighter (Daniel Ross) who admitted having sex and taking explicit photographs of a 16-year-old girl at a Spokane city fire station. As a result, a sex claim by the victim against the city of Spokane was dismissed. A federal judge dismissed the case, stating he dismissed it **because no criminal charges were filed against Ross by the Spokane County Prosecuting Attorney.** This case was a blatant miscarriage of justice, which was manipulated by the prosecutor in collusion with other high-level city officials to protect the city and the city employed perpetrator. These action contain the elements of malfeasance, misfeasance and a violation of his oath of office because there was abundant and substantial probable cause for Tucker to charge the firefighter.

Allegation 3. On March 18, 2006, Otto Zehm, 36, a mentally handicapped janitor was beaten, tasered and hog-tied inside a Zip Trip convenience store by seven Spokane police officers after being wrongly identified as a suspect in a possible theft. Acting police Chief Jim Nicks claimed Zehm was combative and “lunged” at the first officer on the scene, Karl Thompson. On March 20, 2006, Zehm died at Deaconess Medical Center. Police acknowledge that the potential theft report that led to the confrontation was unfounded.

On March 23, 2006, Acting Chief Nicks reviewed the security video from the Zip Trip with detectives. He cited the ongoing investigation as his reason for refusing requests to make copies of the video footage publicly available. On May 30, 2006: Spokane County Medical Examiner Sally Aiken listed “homicide” as the cause of Zehm’s death. On May 31, 2006, Spokane Police Detective Theresa “Terry” Ferguson finished her investigation into the fatality, concluding that none of the seven officers who struggled with Zehm committed a crime.

On June 7, 2006, attorneys representing Zehm’s family, after a private viewing of the still-sealed security video, demanded an official retraction of the city’s description of events. The Spokane mayor and police chief both denied any wrongdoing by the police. Assistant City Attorney Rocky Trepiddi stated Zehm caused his own death by lunging at Officer Thompson. (The video showed Zehm was attacked by the police officer with no provocation. There was no lunge, the entire police investigation was proven to be a cover-up.)

On July 13, 2006, under threat of lawsuit, Spokane County Prosecutor Steve Tucker authorized public release of the security video. There was a surveillance video taken, which contradicted key assertions in the city’s official version of events. **This was a well-planned and blatant cover-up by public officials of a police-involved homicide. By this time, Prosecutor Tucker had to have been totally aware of the criminal circumstances involving the police department and the cover-up by Assistant City Attorney Rocky Trepiddi, City Attorney Howard Delaney, and various members of the police departments personnel and command staff. Throughout this entire police-committed crime and cover-up, Prosecutor Tucker took no action. This case also contained the element of malfeasance, misfeasance and a violation of his oath of office by Prosecutor Tucker. (As evidenced by the U.S. Attorney’s office in their filing of April 2010)**

On July 17, 2006 Mayor Dennis Hession announced that he would seek an outside agency to investigate the Zehm case. Hession also disclosed that the FBI, despite its earlier denial, was in fact conducting a civil rights investigation into Zehm’s death.

In June of 2009, Jim McDevitt, the Department of Justice US Attorney announced at press conference that

Officer Karl Thompson has been indicted on a count of unreasonable use of force and that he lied and impeded the investigation. As the Prosecutor, Tucker would have known about this and was part of the cover-up. The following story written by Thomas Clouse, a *Spokesman-Review* Reporter, accurately sums up Prosecutor Tucker's continuing malfeasance, misfeasance and violation of his oath of office.

Tucker mum on Charges

Ten days after a jury convicted Officer Karl F. Thompson Jr. in federal court, Spokane County Prosecutor Steve Tucker has given no indication that he will move forward in state court with an investigation into Thompson or other officers involved in the 2006 confrontation with Otto Zehm.

Tucker avoided questions for more than a week. His only response to multiple calls and office visits was an email on Friday asking about the "specific case" reporters were inquiring about. He then didn't respond by 5 p.m. Friday to a list of emailed questions.

In 2006, Tucker put his investigation on hold, saying he wanted to know what federal investigators would find. But a federal source, who spoke only on condition of anonymity, said neither Tucker nor anyone from his staff has requested any of the evidence obtained in the federal probe, which is continuing.

One former, longtime prosecutor believes he has seen enough evidence presented by the FBI to charge two officers with first-degree manslaughter in connection with the death of Zehm, who stopped breathing while hog-tied by police on March 18, 2006. And another former prosecutor said at the very least, Tucker needs to seek a prosecutor from elsewhere to continue the investigation.

"I thought everybody in the case and cover-up should be immediately terminated and an independent investigation should be started to determine if anyone should face prosecution," said Don Brockett, who served as county prosecutor from 1969 to 1994. "What is lost in this – this wasn't just the assault and beating of Otto; It caused his death."

Five years ago, Tucker shunned a suggestion – by someone he refused to identify – to hand the Zehm investigation over to a prosecutor from another jurisdiction. "It's my job to make the decision," Tucker said in July 2006.

Three months later, Tucker put his investigation on hold after he learned federal agents had found a witness that Spokane police had not interviewed. Last year, while successfully running for a fourth term in office, which pays about \$145,000 a year, Tucker said he still didn't know what evidence the FBI had obtained.

Thompson's recent four-week trial in Yakima produced reams of evidence that painted a troubling image of the Spokane Police Department. Federal prosecutors described a department-wide "whitewash" of an investigation into its own officer.

Testimony revealed that police detectives refused to give witness statements to a medical examiner and other officers contradicted their own statements to a federal grand jury. Federal prosecutors said the missteps, gaffes and misstatements were all done to make Thompson look less culpable.

"What the family has wanted all along was full accountability," said Breean Beggs, who represents Zehm's mother in a companion civil suit. "We would be encouraged if the county prosecutor would investigate with all the information he now has. We have been and continue to take the prosecutor at his word that once he has the information from the federal case that he will continue his efforts."

As for Tucker, he indicated during an interview in 2010 that the only charges he thought would apply would be misdemeanor assault charges against the officers. And, he said, those crimes would have all reached the statute of limitations.

But several witnesses testified they saw Thompson use deadly force by striking Zehm in the head.

Although he was barred from testifying about cause of death during the trial, defense medical expert Dr. Daniel Davis said it was clear to him that Zehm died because officers Erin Raleigh and Jason Uberuaga placed their weight on Zehm while he was hog-tied and lying on his stomach.

Davis' analysis shows that Raleigh applied pressure on Zehm's abdomen for 1 minute, 34 seconds; Uberuaga "remains on

Zehm's chest/neck area for a total of 2 minutes, 47 seconds," Davis wrote in his report. "After pressure was removed, it was noticed almost immediately that (Zehm) was unresponsive."

Brockett said that evidence alone would provide a legal basis for Tucker to charge those officers with first-degree manslaughter, which requires someone to act recklessly to cause another's death.

"You can't stand there and watch someone die and not say it was negligence. Now that we found out they had their knees on his back, that makes it reckless," Brockett said. "It's inexcusable. It's got to change."

Jim Sweetser, who succeeded Brockett as county prosecutor, said Tucker's role has been compromised because of his close association with local law enforcement. During his four years in office, Sweetser successfully prosecuted former Spokane County Sheriff's Deputy Tom Dibartolo for killing his wife in 1996.

"If he does nothing, then the public should be outraged, because that is part of his job," Sweetser said of Tucker, who is a former trooper with the Washington State Patrol. "Whatever decision is made, it needs to be credible. It needs to be something we can trust and not subject to the interpretation of bias."

Brockett said he still hasn't heard an explanation for why oxygen wasn't supplied to the mask Raleigh placed over Zehm's face to reportedly keep him from spitting. Firefighters have since ended the practice of handing over the non-rebreather masks to officers.

"I couldn't believe it that an officer (Tim Moses) had to be provided immunity to testify. I thought that was the blackest mark the Spokane Police Department has ever received," Brockett said.

Allegation 4. In November 2011, Prosecutor Steve Tucker plea-bargained seven felony charges against a Spokane man down to two gross-misdemeanors. The circumstances of this case were summarized in an article by Thomas Clouse, a *Spokesman-Review* reporter, accurately describes the circumstances. This story appeared on November 26, 2011:

Prosecutor rankles judge

No-show to explain slashed charges in plea deal puts shooting case on ice

A judge refused this week to honor a plea agreement brokered by Spokane County Prosecutor Steve Tucker after Tucker brushed off her demand to appear in court and explain his actions.

Earlier this month, Spokane County District Court Judge Debra Hayes put off the deal – which would have reduced seven felony charges from a shooting incident to two misdemeanors – and ordered Tucker to attend a hearing on Tuesday; Tucker was a no-show.

"He indicated that it was his position that the court did not have the authority to compel his attendance on a case like this so he was declining to come," Deputy Prosecutor Steve Garvin said.

The incident prompted Hayes to refuse to accept the guilty plea of Lucas J. Merrill, 28, who faced seven counts of first-degree assault after he fired several shots into an occupied home in fall 2009 during a dispute over a dog. According to the family who lived there, bullets missed by inches two toddlers who were sleeping in the front room.

"This is about as close to a murder case as I've seen as a felony reduction," Hayes said during a hearing on Nov. 14. "You can probably tell I'm not all that excited about it."

Garvin told Hayes at the hearing that Tucker personally negotiated the agreement to drop all felonies and have Merrill – who served two tours of duty in Iraq – plead guilty to two counts of misdemeanor reckless endangerment so that his case could be handled through the county's Veterans Court.

"I recognize it's an extraordinary settlement," Garvin said, according to court transcripts obtained by The *Spokesman-Review*. "But, uh, Mr. Tucker has approved it and so I'm going to recommend it to the court."

Although Tucker brokered the deal for Merrill, he did not attend the Nov. 14 plea hearing. Hayes, afraid that such a

plea may put a federal grant that funds Veterans Court in jeopardy, rescheduled the hearing until she could hear directly from Tucker.

"I'm also going to compel Mr. Tucker to be at that hearing so we can get the information from him, because I think that's very important because he is the one who negotiated the plea," Hayes said in court.

When Tucker didn't show up Tuesday, Hayes told Garvin she "wanted Mr. Tucker to come to this ... because he brokered the plea agreement according to what you represented in court."

"Is Mr. Tucker in the office today?" she asked.

Garvin indicated that Tucker was at work but that he wouldn't appear.

Hayes responded, according to the transcript: "So he declined to come to court on a case where he actually did the plea negotiations and he ordered you to come up and cover for him?"

"That's correct, your honor," Garvin said....

At the time of the shooting, Gertlar's daughter was in the home with her young girls, who were 3 and 2 the time. The children were sleeping in the living room and the "bullets missed the grandkids by inches. They will not sit on the couch and are terrified to be in the living room," Gertlar wrote. "We feel, as a family, that (Merrill) should be charged accordingly." ...

This case also contained the element of malfeasance, misfeasance and a violation of his oath of office by Prosecutor Tucker. Not only was Prosecutor Tucker irresponsible in reducing the charges, but his actions were a direct affront to our courts, our system of justice and the public's safety and to the public who he is sworn to serve and protect.

Spokane County District Court Judge Debra Hayes made a responsible decision in asking Prosecutor Tucker to explain his reasons for reducing seven felony counts.

Shannon Sullivan, pro se

The above people verify under oath that the charges against Prosecutor Steve Tucker are true and that we have knowledge of the alleged facts upon which the stated grounds for recall are based.

Notary Public