

HONORABLE LONNIE R. SUKO

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9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 ESTATE OF OTTO ZEHM, deceased, and
13 ANN ZEHM, in her personal capacity and
14 as representative of the Estate of Otto
15 Zehm,

16 Plaintiffs,

17 v.

18 CITY OF SPOKANE, JIM NICKS, KARL
19 THOMPSON, STEVEN BRAUN, ZACK
20 DAHLE, ERIN RALEIGH, DAN TOROK,
21 RON VOELLER, JASON UBERAGA, and
22 THERESA FERGUSON, each in their
personal and representative capacities,

23 Defendants.

NO. CV-09-80-LRS

DECLARATION OF
MARK BURBRIDGE

24 I, MARK BURBRIDGE, declare under penalty of perjury, that the following is
25 true and correct.

26 1. I make the following declaration based upon my own personal
27 knowledge.
28

DECLARATION OF MARK BURBRIDGE - 1

HOWARD F. DELANEY, City Attorney
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1 2. I am employed as a police officer for the City of Spokane Police
2 Department (SPD). I currently hold the rank of Detective and work in the Major
3 Crimes Unit. I was in the same assignment in March 2006.
4

5 3. Det. Ferguson was the scene investigator involving Otto Zehm and a
6 struggle with the police. On the night of March 18, 2006, I processed the scene of
7 the struggle, documenting evidence, directing photographs, arranging scene
8 mapping, and collecting evidence. I interviewed several witnesses who were still
9 on the scene.
10

11 During the following weeks, I interviewed several more witnesses. Det.
12 Marske from the County Sheriff's Office was my shadow for this investigation.
13

14 4. I believe that all of my actions were lawful and appropriate in this
15 investigation. Nevertheless, I have known that I could be named as a defendant in
16 a lawsuit by the Zehm estate against the City and police officers because their
17 lawyers have made accusations against the police officers who detained Mr. Zehm,
18 as well as the administrators and investigators.
19

20 5. I have conferred with Assistant City Attorney Rocco N. Treppiedi
21 regarding issues in the civil claims and potential lawsuit since 2006.
22

23 6. After the Zehm estate filed a claim against the City, Mr. Treppiedi
24 informed me that the City's attorneys were designating me as a speaking agent for
25 the City with respect to part of the investigation because I was one of the lead
26 investigators. I met with him and other lawyers for the City in that regard. As I
27 understood it, all meetings were within the attorney/client privilege. The lawyers
28

1 said the designation was under a rule I was not familiar with, but they explained
2 the basic concept to me.

3
4 7. I was subpoenaed to testify before a Grand Jury by Assistant U.S.
5 Attorney Timothy Durkin. I was prepared to testify fully and truthfully about the
6 Otto Zehm investigation.

7
8 8. In late March or early April 2009, Detective Marske was summoned to
9 the U.S. Attorney's Office for an interview. Det. Marske took with him his notes
10 concerning everything we did. Mr. Durkin confronted Det. Marske, telling him he
11 believed I filed false reports. Det. Marske refuted Mr. Durkin's claims and pointed
12 out notes which mirrored my reports almost exactly.

13
14 9. In late April, 2009, I met with several city Attorneys and an attorney
15 hired by the City of Spokane, Carl Oreskovich. This meeting was for the purpose
16 of discussing civil issues surrounding the incident. Mr. Oreskovich told me he
17 went to law school with Mr. Durkin and a couple of days prior to this meeting, he
18 bumped into Mr. Durkin at the federal building. Mr. Durkin told Mr. Oreskovich
19 he believed I had purposely filed false reports. I left this meeting believing I was a
20 target of the grand jury based on Det. Marske's statement and Mr. Oreskovich's
21 statement.
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23

24 10. In May 2009, I received a grand jury subpoena for this incident. I had
25 both the City Attorney and a private attorney contact the U.S. Attorney's Office to
26 find out if I was a target or a witness. I was assured I was a witness only. My
27 scheduled testimony was delayed and I was re-subpoenaed in June 2009.
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DECLARATION OF MARK BURBRIDGE - 3

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1 11. I arrived in the waiting area of the U.S. Attorney's Office one half hour
2 early, as was requested by U.S. Attorney Tim Durkin. Mr. Durkin came out and
3 introduced himself. He then requested that I accompany him to a conference
4 room so he could introduce me to several people. I declined. This made Mr.
5 Durkin very mad. He raised his voice, crooked his finger at me and ordered me to
6 come with him. I told Mr. Durkin I was not a child and asked him not to crook his
7 finger at me. I told him that he had no authority to order me anywhere, especially
8 since I was just a witness. Mr. Durkin stepped back, took a deep breath and
9 apologized. Mr. Durkin said that he had someone important he wanted to
10 introduce me to and asked if I would please come with him. I agreed. Spokane
11 Police Officer S. McIntyre witnessed everything that happened in the waiting area.

12 12. Persons present in the conference room were Assistant U.S Attorney
13 Aine Ahmed, FBI Special Agent Jangaard and a gentleman Mr. Durkin identified
14 as being from the Department of Justice.

15 13. Mr. Durkin then spent ten minutes telling me how multiple witnesses
16 had given the FBI statements that were substantially different than what my
17 reports said. Mr. Durkin told me if I went upstairs and testified to the accuracy of
18 my reports, there was "a high likelihood you will be indicted for perjury" and sent
19 to prison for ten years.

20 14. I told everyone present to "pound sand" and I would be testifying to
21 the accuracy of my reports.
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1 15. I testified before the Grand Jury for several hours. All of my
2 testimony was truthful. I was questioned by the prosecutor about my discussions
3 with the City Attorney's Office in their preparation to defend the City and if I got
4 sued. I believe the prosecutor's questioning about my discussions with the
5 lawyers violated the attorney-client privilege.
6

7 16. During my time with the federal grand jury, Mr. Durkin questioned
8 me about the "lunge statement" and if I was the one from whom it originated and
9 to whom I had made the statement. I told the grand jury I did not hear the lunge
10 statement that night and the earliest I could have heard it was Sunday night on
11 the news or Monday when I returned to work. Mr. Durkin then said something to
12 the effect that Jody Dewey testified that you are the one that told her about Mr.
13 Zehm's lunging at Ofc. Thompson. I told the grand jury that was not possible.
14
15

16 17. At the grand jury, I testified to my reports. At the conclusion of my
17 testimony, Mr. Durkin asked me in front of the grand jury how I was treated
18 through the process. I told the grand jury that I had been treated horribly and
19 described the circumstances to them. Mr. Durkin walked me out of the grand jury
20 room. As we exited the doors, Mr. Durkin turned around and splashed a thick
21 stapled bundle of papers on to my chest. Mr. Durkin then said, "next time you
22 think I treated you badly, remember I didn't impeach you with this." I looked at
23 the paperwork, asking Mr. Durkin what it was. Mr. Durkin said it was a copy of a
24 lawsuit filed against me for lying to a federal magistrate on a search warrant
25 affidavit. I then recognized the names. I told Mr. Durkin he didn't scare me, so
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28

1 let's go back to the grand jury and address the lawsuit. Mr. Durkin turned and
2 walked away. I had been dismissed from the lawsuit several years ago.


3
4 18. Approximately two weeks after my testimony, I sought out Ms. Dewey
5 and asked if I could speak with her. Ms. Dewey and I went into a conference
6 room. I told Ms. Dewey about what Mr. Durkin was claiming as to what she had
7 testified. Ms. Dewey stopped me and denied Mr. Durkin's allegation. Ms. Dewey
8 told me she testified she heard the lunge statement at some point the first few
9 days- it could have been that night, in the media over the next few days, or around
10 the office. She was not sure. Ms. Dewey was adamant she did not testify that I
11 was the one who told her about the "lunge statement".
12

13
14 19. During the early spring 2008, I was assisting Det. Hill, who was
15 following up on a felony assault complaint. Det. Hill was interviewing a female
16 witness where the witness commented that she knew me. The witness said she
17 was one of the two original complainants on the Otto Zehm case who reported
18 themselves as being robbed.
19

20 20. I asked her how she was doing and the female responded to me that
21 her interview with the F.B.I as the worst thing in her life. The witness said she
22 was afraid of the F.B.I. and felt they were trying to scare her into changing her
23 statement. The witness said she and her mother called the City Attorney to report
24 what had happened with the F.B.I.
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DATED this 21st day of September, 2009.



MARK BURBRIDGE

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2009, I electronically filed the foregoing "Declaration of Mark Burbridge" with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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