

# CENTER FOR JUSTICE

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June 7, 2006

Mr. Rocco Treppiedi  
Office of the City Attorney  
5<sup>th</sup> Floor Municipal Building  
Spokane, WA 99201-3326

Dear Rocky:

I am writing to follow up on our conversation of June 1, 2006, where I expressed our client's concern that the City already violated the agreed protective order precluding release of information in police investigative files, misstated material facts contained in the video and contained in that file, and posted confidential information from the autopsy report on the City's website.

On May 26, 2006, at the insistence of the City of Spokane, the Center For Justice and the City of Spokane entered into a Protective Order, dated May 30, 2006. The Protective Order reads, in part:

Confidential material shall hereafter be used solely by the parties for the purpose of conducting this litigation and not for any other purpose without order of the Court or written consent of the parties or their counsel.

Confidential material was defined as

The Spokane Police Department's investigative file that relates to the arrest of Otto Carl Zehm on March 18, 2006 and his subsequent death. This shall include all photographs, and audio tape, 9-1-1 emergency call, police dispatch tape, and other evidence gathered; the names and statements of all witnesses

#### MISSION STATEMENT

THE CENTER FOR JUSTICE IS A NON-PROFIT LAW FIRM COMMITTED TO THE EXPERIENCE OF JUSTICE WITH THOSE OF LIMITED OR NO RESOURCES OR INFLUENCE THROUGH COMPASSION AND AN AWARENESS OF THE SACREDNESS OF THE EARTH.

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Within hours of Commissioner Fred Aronow signing this order, Acting Police Chief Nicks held a press conference, where he read a prepared statement and answered questions. Chief Nicks disclosed information from the police investigative files in both his prepared statement and in answers to specific questions from the media. Chief Nicks did not seek prior permission from the Court nor our client prior to these disclosures. The plain language of the order prohibited these disclosures and our client is considering which of the available remedies provided for in the order would be most appropriate. You drafted the remedies to include:

...but not be limited to financial terms, exclusion from evidence of the confidential material that was disclosed in violation of the order, and the dismissal with prejudice of the offending party's cause of action or defense, and/or any other term deemed appropriate by the Court.

In our informal discussions on this matter, you have posited that since some of the information Chief Nicks disclosed had been previously disclosed by the City and/or was needed to answer questions from the press, his disclosures fell outside the protective order. You specifically did not include those exceptions in the protective order that you drafted. You have now explained in a June 6, 2006 e-mail, that the medical examiners report was not subject to the order given that the information was independently obtained by Ms. Zehm. However, there is no discussion in your email about the factual statements made by Chief Nicks in which he expressly references the police investigative report.

Chief Nicks provided false information to the public in his disclosures that is unequivocally contradicted by the Zip Trip surveillance video. You and I reviewed the video with Chief Nicks on a previous occasion and his misstatements in a press conference designed to influence the public are disturbing.

At the beginning of the press conference, Chief Nicks read from the Medical Examiner's report, announcing to the media that the cause of death was "hypoxic encephalopathy due to cardio pulmonary arrest while restrained in a prone position for excited delirium." Chief Nicks proceeded to field several questions about the manner of restraint and the amount of time that the officers held Mr. Zehm prone on his stomach. Chief Nicks alternately stated that during the time that the police "hobbled" Mr. Zehm, he was on his side "the entire time" and "the majority of the time." Chief Nicks made it clear that officers are trained to place individuals on their side when they are "hobbled."

However, the time clock on the Zip Trip surveillance video indicates that the police restrained Mr. Zehm for sixteen (16) minutes and twenty-six (26) seconds before the officers called for the paramedic's assistance. During this time, officers restrained Mr. Zehm on his stomach for approximately thirteen (13) minutes. According to Chief Nicks' statement of policy, keeping him on his stomach violated department policy. According to the autopsy report, this restraint is what caused Mr. Zehm's death.

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In an attempt to justify the force used by the responding officer, Chief Nicks claimed that Mr. Zehm "lunged" at the officer in a threatening manner. In addition, Chief Nicks stated that Mr. Zehm "turned quickly" on the officer with a 2-liter bottle of soda, which the Police Department characterized as a dangerous weapon.

To the contrary, the video evidence shows the officer running at Mr. Zehm from the rear, with his baton held high in the air. Only two (2) seconds before he was struck by the baton, Mr. Zehm turned and noticed the officer, he immediately retreated backwards and held up his hands to ward off the imminent baton blow. As Mr. Zehm backed away, the officer struck Mr. Zehm with his baton several times and pulled him to the ground. The first baton strike was only two (2) seconds after Mr. Zehm first saw the officer and only five (5) seconds after the officer entered the store. It is clear from the Zip Trip video that Mr. Zehm never made any movement towards the officer, and only retreated from the officer's advances.

Further, it is clear from the video that there was not sufficient time to have any type of discussion between the officer and Mr. Zehm. Nor is there any allegation that the officer told Mr. Zehm that he was in custody or was being searched. Neither was there any probable cause for a misdemeanor observed by the officer or a felony reported by anyone else that would have justified a warrantless arrest.

At this time the Center For Justice requests that Chief Nicks publicly retract these misrepresentations and accurately describe the facts, as they are shown in the Zip Trip surveillance video. In addition, the City should publicly acknowledge that Chief Nicks revealed confidential information, in violation of the express terms of the agreed protective order.

Finally, the City has posted direct quotes from Mr. Zehm's Medical Examiner Report on its website. This and Chief Nick's similar comments appear to violate RCW 68.50.105 (2006). The Washington State Supreme Court made clear in Reid v. Pierce County, "immediate relatives of a decedent have a protectable privacy interest in the autopsy records of a decedent" and "one who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy." 136 Wash. 2d 195, 205, 961 P.2d 333, 338 (1998). On Thursday you stated that you would review the website posting in light of the applicable law. The last time I checked it was still posted and available to the general public.

We have four specific requests: 1) That the City acknowledge that it violated the protective order and apologize to the family; 2) That the Chief retract his statements that Mr. Zehm was restrained on his side during his hobbling for the majority of the time, that Mr. Zehm's lunging at and/or attacking the officer justified the assault with the baton, and that any type of officer demand occurred prior to the officer's baton strikes; and, 3) That the City remove the web-posting of Medical Examiner Report quotes and apologize to the family for releasing and posting those excerpts.

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We anticipate an immediate response to these requests given the public import and our prior notice of these issues in conversation on June 1st. We don't believe that this letter or the video from the convenience store is subject to the protective order because we obtained the video from a source independent of the police investigative files. But, if you have a different opinion, let us know immediately.

Thank you for your attention to these matters.

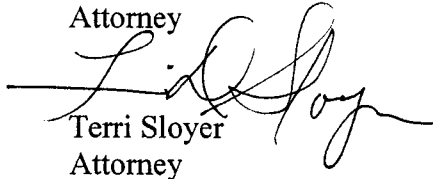
Sincerely,

CENTER FOR JUSTICE



John D. Sklut

Attorney



Terri Sloyer

Attorney

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