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Thursday, February 11, 2010

The Honorable Steven Tucker, Spokane County Prosecutor  
Spokane County Prosecutor's Office  
1100 W. Mallon  
Spokane WA 99260

Dear Mr. Tucker:

The following is my response to the Loundermill Notification and Liberty Interest Name Clearing letter I received on February 5, 2010.

I do not believe that running for elective office is "just cause" under the union contract and do not agree that:

Courts recognize that an incumbent Prosecutor can discharge a deputy prosecutor [that is a union member] who runs against the incumbent.<sup>1</sup>

In the last nine years, I have not been in a position of confidence with Steve Tucker, the elected prosecutor, and have had little to no direct or indirect interaction with him. I do not agree that in my particular case:

A Prosecuting Attorney's Office would be unmanageable if the elected prosecutor had to retain a deputy prosecuting attorney who is in a position of confidence....

If the incumbent felt that I was inappropriately "exercising discretion" in my job, he could discipline me for not doing my job through the union process.

Exercising my constitutional rights and running for office is not disrespectful, discourteous, or unfriendly to other County employees or County leadership.

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<sup>1</sup> Insertions in brackets are mine and not in original.

On Tuesday February 2, 2010 at the 1553-PA regularly scheduled meeting, I announced that I was going to run for Spokane County Prosecutor. I specifically and unequivocally said that the very first official act if I were elected would be to sign the 1553-PA Union Contract. I intended for those present to understand that “just cause” would continue if I were elected. There would be no interruption of the contract. I later issued a press release and made a statement for TV. In both, I said I would not solicit endorsements or donations from anyone in the Spokane County Prosecutor’s Office. I did not and do not want to cause problems for other deputy prosecutors.

Prior to my announcement, I discussed and prayed about the matter with friends and my family. In one case when discussing it with a colleague, John Grasso, I did not specifically say that I was the one who was going to run. I was not certain at that time that I would run. Recently a new Seattle City Attorney fired 14 attorneys and was quoted as saying that he had fired the attorneys solely to make room for his friends. I believe that Spokane County has the hardest working and most overworked career prosecutors in the state and had discussed with friends whether it was necessary to fire people if I were elected prosecutor. Some who I discussed the matter with felt that you needed to put your own people in charge right away and others argued that because the crux of the reason I wanted to run was to fight for our office in the face of a worsening economy, no one should lose their job if I am elected. I came to the certainty that signing the 1553-PA Union Contract would be my very first official act if elected. No one would be fired because my friends and I felt it was necessary for me to run for Spokane County Prosecutor.

John Grasso ran much of Steve Tucker’s re-election campaign in 2006. I felt in 2006 that if either of the other two candidates running were elected, it would not be good for the office.. When Bob Caruso announced he was running for Spokane County Prosecutor he contacted me with an offer of making me his Chief Criminal Deputy Prosecutor. Mr. Caruso and I have been friends since we met in 1999 studying for the Bar. I told Mr. Caruso that I was not interested and told John Grasso of the offer. I also made the decision to support Mr. Tucker’s re-election campaign in 2006 because I felt the other candidate, Jim Rierson, under the guise of running for judge had misled me to get information when he asked questions about how the Prosecutor’s Office worked. I worked on Mr. Tucker’s re-election campaign helping to put up signs

On February 2, 2010, after making my official announcement declaring my candidacy for Spokane County Prosecutor, I contacted Mr. Grasso to request a lunch appointment with Steve Tucker. He asked why and I told him that I was running for Spokane County Prosecutor. Mr. Grasso asked me if his job would be safe. In response to his question, I told him that I thought he was an excellent supervisor and that it would be foolish to ignore his talent and experience. He asked if anyone would be fired. In response to his question, I told him without hesitation that I would sign the collective bargaining agreement first thing. He asked if there were any specific moves I had in mind. In response to his question, I mentioned that although the current District Court Supervisor knew the law better than anyone, I felt that he had not provided enough training for new deputy prosecutors. I very rarely interact with

the District Court supervisor and can not remember the last time we had talked. I definitely did not say that the current District Court supervisor would be fired but did say that the current supervisor probably knew the law probably better than anyone I know but that I thought his training skills were lacking. I categorically did not say that there would be any personnel movement in the office prior to me signing the collective bargaining agreement. The only exception would be from people choosing to quit and not from me firing them or pressure from me to resign. That is my clear recollection of what we discussed about movement of personnel. I believe that Mr. Grasso asked if there was any chance at all someone could get fired. In response to his question, I said that there were probably unforgivable things. It was my thought that “just cause” and the union contract would still apply though. I was thinking of actionable libel or criminal acts which could be just cause under the contract. It was clear from the context that I was not talking about people supporting Steve Tucker or opposing me. In further response to his question, I also explained to Mr. Grasso that I had no problem with people supporting Mr. Tucker and would not hold a grudge if someone enthusiastically supported Mr. Tucker for re-election. Mr. Grasso asked me if anyone else was going to run. In response to his question, I told him that I had been contacted by an attorney who had indicated he was considering running as a Democrat. That person contacted me as a courtesy and until he publicly announces; I do not feel that it is appropriate to disclose his name. I believe Mr. Grasso and I also discussed the idea of supervisors being in a separate union. In response to his questions, I said that I found it unusual that supervisors and the people they supervise aren’t separated better. If elected, it’s an issue I would like to consider, but in no way did I ever say that supervisors shouldn’t be union members.

Mr. Grasso asked me if I thought I would be fired. In response to his question, I told Mr. Grasso that I hoped not but many of my friends thought it might be good publicity and I shared what my friends had said about how it would “get a few bites at this apple...”. I was clear in responding to his question, saying that I hoped not to be fired and that I was just as committed to working my cases as I had always been. I do not have attorneys lined up with a demand letter. I do not have another job lined up. I have asked around about jobs. I have discussed being fired with friends, many of whom of course are attorneys. They have all said that it would be quite unfair and unreasonable because of my strong work ethic around the office and consistent praise I receive from supervisors. Many of my friends and family feel that should it come to me being fired as Deputy Prosecutor, my best recourse may be to file a claim. Mr. Grasso told me that he would relay my answers to you. I told him that I assumed he was asking the questions on Steve Tucker’s behalf.

I acknowledge that I knew being fired was a definite threat. After the November elections in 2009, I was working late at the office. I was contacted by a deputy prosecutor who was once my supervisor and wanted my cell number. She called back on my cell and asked for an introduction to the Chair of the Spokane County Republican Party. I was not surprised. Several months prior she had started showing up at Republican functions. I assumed she was gearing up for a run for office—probably Spokane County Commissioner. At the time I was Vice Chair of the Spokane County Republican Party Executive Board, so this type of call was not unusual. I asked why she wanted the introduction. She said that she was going to run for Spokane County Prosecutor. Because she had previously been a supervisor and because I felt that she had at one time unfairly targeted a deputy prosecutor for

discipline, I was concerned. I asked her if she would sign the union contract first thing. We talked at length. She would not commit to signing it. I asked the question every way I could think of asking it as it was very important to me. I was thinking while she was talking that there was no way I could support her. I felt that if she were elected she would fire the deputy prosecutor who she had targeted while she was a supervisor. Because she was adamant that she would not commit to signing the contract, I mentioned the conversation to John Grasso. Sheriff Ozzie Knezovich contacted me and told me that this deputy prosecutor sent him a text containing her list of endorsements for prosecutor and it included my name. I emphatically told him that I had not and would not endorse her. I did not ask the Sheriff who else was on the list as I was not interested in getting any deputy prosecutor in trouble. I also mentioned Sheriff Knezovich's call to Mr. Grasso.

Because the other deputy prosecutor planned on running, John Grasso set up a lunch with Steve Tucker. I was instructed to come up with ideas for Steve Tucker to get more involved with the Republican Party. I came up with several obvious ideas like attending Republican functions and donating to Republican candidates. At the start of the conversation, I told Steve Tucker that I had also thought about running against him but decided against it. During the conversation, Mr. Tucker plainly and forcefully said that he would fire the deputy prosecutor who was running against him as he wouldn't pay anyone \$100,000 a year to run against him. He seemed to take the challenge personally. I wrote Mr. Tucker a check at that point, as he said he was going to run again. (I have not asked for that the donation be returned.) I had no intention of running at that time. I felt at that point that I would much rather have Steve Tucker re-elected prosecutor than the other individual who stated she was running. Later, Mr. Grasso had me fill out a statement about the deputy prosecutor detailing my conversation with her and my concern that she would not commit to sign the collective bargaining agreement as well as my concern that she had unfairly targeted a deputy prosecutor. I was never given a copy of the statement. No disciplinary action was taken against this individual for saying that she was running for prosecutor. She still works in the Spokane County Prosecutor's Office. As I am committed to signing the collective bargaining agreement, will not solicit donations or endorsements at the office, and am not going to threaten anyone's job, I expect to be allowed to keep my job as Deputy Prosecutor and continue putting career criminals behind bars. I am quite hopeful of this outcome, as the other deputy prosecutor making moves to run was allowed to keep her job.

Through nine years of solid work and dedication as a Deputy Prosecutor, I have never been disciplined, nor have I ever been notified of complaints about my work. My strong work ethic and late working hours have often led to me being cautioned that I work too hard and sometimes care too much about my job. During my tenure working for the Spokane County Prosecutors Office, I have been repeatedly and consistently told by management:

- That I do a great job;
- That my initiative is appreciated;
- That I am a team player;
- That I have a strong work ethic; and
- That I work well with my colleagues and staff.

I have kept many of those emails. Public defenders regularly call me when they have a question regarding sentencing law because they know I will either have the answer or know where to find the answer. I have worked hard to develop a reputation for being respectful and courteous and have often had law enforcement officers and victims praise my work to both my supervisors and Steve Tucker. Because of the workload, it is almost impossible to get everything done. I have routinely come in on weekends and often stayed late into the night trying to get all of my work completed. I have never complained.

I would like to return to work as soon as possible. The day I was put on administrative leave I had called a case ready for trial. It was scheduled for February 16<sup>th</sup>. The defendant has several prior felony convictions and I am afraid that the case will not go to trial if I do not return to work. In 2010, I have already taken three cases to jury verdict. All three defendants have significant felony histories and were convicted by a jury on felony charges. In two of the cases Aggravating Factors were found. The sentencing has not yet occurred in two of the cases. In the third, the judge found an aggravating factor because the defendant had 24 prior felony convictions. The defendant received an exceptional sentence of 84 months and 12 months community custody. Jack Driscoll, Chief Criminal Deputy, sent me an email congratulating me on the verdict and thanking me for my hard work. He has sent me many similar emails over the last nine years.

I have not made conflicting statements as to whether I would sign a continuation of the collective bargaining agreement. Since given the Loundermill Notification I have made no public statements other than I had received the notification and what it was. If allowed to return to work, I will not discuss the campaign during working hours even if off campus on break or at lunch. I will not discuss my campaign with deputy prosecutors during working hours or otherwise. I will of course continue to publicly state, 1) why I am running and 2) that signing the collective bargaining agreement would be my very first official act if elected.

I respectfully ask to be re-instated as soon as possible. If Steve Tucker believes discipline is necessary for not stating clearly enough when asked that I would immediately sign the collective bargaining agreement, or for not stating clearly enough when asked that I have no intention of firing anyone if elected, or even for not stating clearly enough when asked that I will not solicit endorsements or donations from the Spokane County Prosecutor's Office, then given my zero history of disciplinary problems, I feel that a letter of warning would be sufficient though undeserved.

Sincerely,

*David Stevens*

David Stevens,  
Deputy Prosecutor, WSBA# 29839