

## Zehm Issue Frequently Asked Questions (FAQs) City of Spokane

Rev. 9/9/2011

### ***Background Information:***

Otto Zehm was confronted by police on March 18, 2006, as a robbery suspect. A physical confrontation between Mr. Zehm and officers occurred. Mr. Zehm went into cardiac arrest while police and paramedics were waiting for an ambulance to take him to a hospital for evaluation because of his continuous agitated state while his hands and legs were restrained. Mr. Zehm died on March 20, 2006.

Otto Zehm's death was a tragedy. We express our sympathies to Mr. Zehm's mother and his friends.

### ***What are the legal matters surrounding this issue?***

There are two ongoing separate legal matters concerning this incident. The first is a civil case for damages against the City and certain Police employees filed by lawyers representing the estate of Mr. Zehm in early 2009, three years after the incident. The second is a criminal case brought against Spokane Police Officer Karl Thompson by the U.S. Attorney's Office several months after the civil suit was filed.

### ***What is the status of the criminal case?***

A criminal trial of Officer Thompson now is scheduled to begin in federal court on Oct. 11 and is expected to continue for several weeks. The criminal trial has been postponed twice. The City of Spokane is not a party in the criminal case. The City cannot take sides in that case as the defendant is entitled to a fair trial. Ultimately, the trial will determine whether any crimes have been committed, based on evidence, law, and circumstances.

### ***What is the charge against Officer Thompson?***

Officer Thompson was indicted by the U.S. Department of Justice under federal criminal civil rights law in June 2009. The indictment includes two counts. **One:** That he used excessive force on March 18, 2006, with the intent to deprive Mr. Zehm of his constitutional rights. **Two:** That he knowingly made a false statement in an interview on March 22, 2006, with the intent to impede and obstruct an investigation under federal jurisdiction.

### ***What is the status of the civil lawsuit?***

Work on the civil lawsuit came to a standstill soon after the suit was filed. Federal Judge Lonny Suko ordered a stay in the civil case in October 2009. The stay prevents the parties from engaging in the discovery process until the federal criminal trial concludes. The stay was requested by the participants in the criminal case. The City objected to the stay, knowing that it would create significant legal and practical obstacles to getting the civil case tried in court.

### ***How does the City ensure its handling of the civil case remains on course?***

The City Attorney's Office has been unable to complete much work—beyond monitoring filings in the criminal case—for the last two years because of a court-ordered stay in the civil case. The City's lawyers provide on-going briefings to inform the City's elected leaders and key appointed officials. Additionally, attorneys for the City's insurance teams also provide strict and constant oversight of City's handling of the litigation. They continually reassess the City's work and will continue to do so as the litigation proceeds.

### ***Why is the resolution of this matter taking so long?***

More than five years have passed since the original incident. The legal issues in this matter remain unresolved. Almost three years elapsed between Mr. Zehm's death and the date the lawyers for the Zehm estate filed the civil action. Work on the civil suit came to a halt just months after it was filed because of a court-ordered stay in that case, which remains in place. Meanwhile, federal criminal charges were not filed until June of 2009—again some three years after the original incident and several months after the civil suit was filed. The criminal trial has been postponed twice. It is now scheduled to take begin on Oct. 11, 2011, and is expected to take several weeks to complete. But that's not the end. If the civil case goes to trial, it will take even longer for a final resolution.

### ***What information on this matter is available to the public?***

Hundreds of filings in federal court—totaling some 10,000 pages of information—are available to the public. They include facts, opinions, witness statements, and legal arguments. The jury in the criminal trial will be expected to sort through all of this information to arrive at a decision.

### ***Why didn't City elected officials meet with the U.S. Attorney in 2009?***

Assistant U.S. Attorney Tim Durkin did request to meet with the Mayor, Council President, and Police Chief to discuss potential conflict of interest questions. It is highly unusual for an attorney to meet with another attorney's clients. However, City Attorney Howard Delaney and Assistant City Attorney Rocky Treppiedi did meet with the U.S. Attorney's Office as a result of this request. They met with the U.S. Attorney for Eastern Washington at the time, Jim McDevitt, along with Mr. Durkin and other representatives of the U.S. Attorney's Office. The City responded to the concerns in a court filing two years ago. The court found no issues of conflict or impropriety on the part of the City.

### ***What happens when the legal cases are resolved?***

The Mayor and members of the City Council will direct a thorough internal and external review of all aspects of the case. Additionally, the Spokane Police Department will conduct a thorough investigation into all aspects of the incident to determine if any additional policy changes, training, or other actions are necessary.

### ***Has the Police Department completed an internal affairs review of the matter?***

The Spokane Police Department has **not** completed an internal affairs review in this matter. That work cannot be completed until after the criminal trial concludes because the SPD doesn't want an internal review to interfere with an ongoing criminal investigation. An internal affairs review considers the incident from a SPD policy standpoint and makes recommendations around policy changes, training, or other actions.