

No. 77300-9

RECEIVED
C5, NOV 28 PM 3:03
BY C. J. ORESKOVICH
CLERK

bjh

**SUPREME COURT
OF THE STATE OF WASHINGTON**

In the Matter of the Recall of:

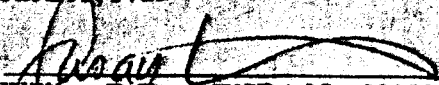
James E. West,

Mayor of the City of Spokane, Appellant

APPELLANT'S BRIEF

Address:
421 W. Riverside Ave.
Suite 1600
Spokane, WA 99201
(509) 747-9100

**ETTER, McMAHON, LAMBERSON
& CLARY, P.C.**

By: 
William F. Etter, WSBA No. 09158
Susan W. Troppmann, WSBA No. 22235
Attorneys for James E. West
Mayor of the City of Spokane

Address:
6404 N. Monroe
Spokane, WA 99208
(509) 328-7700

HOLDEN & ORESKOVICH, P.S.

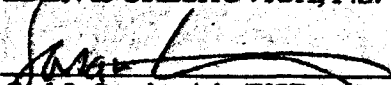
By: 
FCR Carl J. Oreskovich, WSBA No. 12779
Attorneys for James E. West
Mayor of the City of Spokane

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iv - vi
I. ASSIGNMENTS OF ERROR.....	1
A. Assignments of Error.....	1
B. Issues Pertaining to Assignments of Error	2
II. STATEMENT OF THE CASE.....	4
A. Sullivan Petition.....	4
B. Prosecutor’s Ballot Synopsis.....	5
C. Sufficiency Hearing.....	5
D. Superior Court Decision.....	7
E. Judge’s Charge.....	7
F. Appeal.....	8
III. ARGUMENT.....	9
A. Statutory Framework.....	10
B. Factual Sufficiency.....	12
1. Charge II is factually insufficient because it does not include a detailed description of the alleged misfeasance.....	14
2. Charge II is factually insufficient because the allegation of personal motive is conjectural and conclusory.....	15

3.	Attachments to the Sullivan Petition do not remedy the factual insufficiency of the recall charge.....	16
C.	Personal Knowledge.....	17
1.	Ms. Sullivan’s “knowledge” is based on newspaper stories which are based on information from an unknown source.....	18
D.	Legal Sufficiency.....	20
1.	Charge II is legally insufficient because it does not allege conduct interfering with the performance of official duties or the performance of a duty in an improper manner.....	21
2.	Charge II is legally insufficient because there are no facts showing Mayor West exercised his discretion in a manifestly unreasonable manner.....	23
E.	Authority of Superior Court.....	24
1.	The superior court exceeded its authority to “correct” the ballot synopsis by re-writing the recall charge.....	26
2.	Documents submitted at the sufficiency hearing do not provide a factual or legal basis for the recall charges.....	28
IV.	CONCLUSION.....	31

V. APPENDICES.....	33
Appendix A: RCW 29A.56.110 - .140	A-1
Appendix B: Spokesman-Review materials	B-1
Appendix C: City of Spokane Intern Application	C-1

Cases

<i>Chandler v. Otto</i> , 103 Wn.2d 268, 270, 693 P.2d 71 (1984).....	9, 21
<i>Cole v. Webster</i> , 103 Wn.2d 280, 285, 692 P.2d 799 (1984).....	20
<i>Greco v. Parsons</i> , 105 Wn.2d 669, 672, 717 P.2d 1368 (1986).....	21, 23
<i>In re Recall of Ackerson</i> , 143 Wn.2d 366, 370, 20 P.3d 930 (2001).....	9, 10, 13, 17, 18, 22
<i>In re Recall of Anderson</i> , 131 Wn.2d 92, 95, 929 P.2d 410 (1997).....	18
<i>In re Recall of Beasley</i> , 128 Wn.2d 419, 429-30, 908 P.2d 878 (1996).....	13, passim
<i>In re Recall of Carey</i> , 132 Wn.2d 525, 527, 939 P.2d 1221 (1991).....	5-6, passim
<i>In re Recall of Kast</i> , 144 Wn.2d 807, 812-13, 31 P.3d 677 (2001).....	10
<i>In re Recall of Lakewood City Council Members</i> , 144 Wn.2d 583, 585, 30 P.3d 474 (2001).....	20, 23
<i>In re Recall of Morrisette</i> , 110 Wn.2d 933, 935-37, 756 P.2d 1318 (1988).....	13, 20
<i>In re Recall of Pearsall-Stipek</i> , 141 Wn.2d 756, 769, 10 P.3d 1034 (2000).....	30
<i>In re Recall of Wade</i> , 115 Wn.2d 544, 550, 799 P.2d 1179 (1990).....	15
<i>In re Recall of Wasson</i> , 149 Wn.2d 787, 791, 72 P.3d 170 (2003).....	12, 13, 16, 18

<i>In re Recall of Young,</i> 152 Wn.2d 848, 852, 100 P.3d 307 (2004).....	11, 12
<i>In re Recall of Zufelt,</i> 112 Wn.2d 906, 911, 774 P.2d 1223 (1989).....	13, 21, 22
<i>Quadrant Corp. v. State Growth Management Hearings Bd.,</i> 154 Wn.2d 224, 239, 110 P.2d 1132 (2005).....	25
<i>State v. Roggenkamp,</i> 153 Wn.2d 614, 625, 106 P.2d 196 (2005).....	24
<i>Teaford v. Howard,</i> 104 Wn.2d 580, 586, 707 P.2d 1327	12-13, 21, 25

Statutes

RCW 29.82.010	13
RCW 29A.56.110.....	10, passim
RCW 29A.56.110(1).....	20
RCW 29A.56.120.....	11
RCW 29A.56.120(2).....	11
RCW 29A.56.130.....	3, 5, 27, 28
RCW 29A.56.130(1).....	11, 24, 27
RCW 29A.56.130(2).....	11
RCW 29A.56.130(1)(b)	11, 24, 28
RCW 29A.56.130(1), (2)	11
RCW 29A.56.140.....	1, passim
RCW 29A.56.270.....	8, 12

Other Authorities

Washington Constitution, Article 1, §§ 33-34 9

WEBSTER'S NEW WORLD DICTIONARY (2d ed. 1974)..... 14, 25

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1991) 25

Rules

RAP 18.12..... 8

I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The superior court erred in concluding Charge II of the Ballot Synopsis of the Charges for the Recall of Mayor James E. West filed by the Spokane County Prosecuting Attorney is factually and legally sufficient.
2. The superior court erred by allowing Shannon M. Sullivan to supplement the record at the sufficiency hearing on June 13, 2005, for a purpose other than determining whether Ms. Sullivan has knowledge of identifiable facts supporting the Petition to Remove Mayor Jim West.
3. The superior court exceeded its authority under RCW 29A.56.140 to "correct any ballot synopsis" by composing an entirely new recall charge including information not contained in either the Petition to Remove Mayor Jim West filed by Ms. Sullivan or in the Ballot Synopsis of the Charges for the Recall of Mayor James E. West filed by the Prosecuting Attorney.
4. The superior court erred by certifying a Ballot Synopsis and Amended Ballot Synopsis each including an entirely re-written recall charge after the June 13, 2005 sufficiency hearing, thereby depriving Mayor West of an opportunity to challenge the re-written charge.

5. The superior court erred in concluding a public official may be subject to a recall election for engaging in private online conversations and email correspondence when there are no facts showing he used publicly owned computer equipment or engaged in the activities during business hours.

B. Issues Pertaining to Assignments of Error

1. Is a recall charge that does not “give a detailed description including the approximate date, location, and nature” of the act complained of factually sufficient? (Assignment of Error 1).

2. Is a recall charge including a conclusion regarding the public officer’s personal motives factually sufficient? (Assignment of Error 1).

3. If a recall petition fails to specifically identify information contained in attachments, should the information be considered by the court in making a sufficiency determination? (Assignment of Error 1).

4. Is a petitioner’s knowledge of alleged facts sufficient when it is based on newspaper stories which are based on information from an unidentified newspaper consultant? (Assignment of Error 1).

5. Is a recall charge alleging misfeasance legally sufficient when the facts do not clearly establish conduct that “affects, interrupts, or interferes with the performance of official duty” or “the performance of a duty in an improper manner”? (Assignment of Error 1).

6. May a public official be subject to a recall election because he invited a person he knew to apply for an unpaid, short-term internship? (Assignment of Error 1).
7. May the superior court record be supplemented at a sufficiency hearing under RCW 29A.56.140 so the judge will have information to use to draft a new recall charge after the hearing? (Assignment of Error 2).
8. Does the superior court have authority under RCW 29A.56.140 to draft a new recall charge including information not contained in the original petition or in the ballot synopsis prepared pursuant to RCW 29A.56.130? (Assignment of Error 3).
9. Does the term "correct" in RCW 29A.56.140 give the superior court authority to make substantial changes in the content and form of a recall charge? (Assignment of Error 3).
10. May the superior court certify a ballot synopsis including a substantially re-written or new recall charge without giving the public official an opportunity to challenge the re-written/new charge? (Assignment of Error 4).
11. May a public official be subject to a recall election for engaging in private online conversations and email correspondence using his own computer equipment on his own time? (Assignment of Error 5).

II. STATEMENT OF THE CASE

A. Sullivan Petition

On May 18, 2005, Shannon M. Sullivan filed a document entitled Petition to Remove Mayor Jim West (hereinafter "Sullivan Petition") with the Spokane County Auditor. (CP 6-15). The Sullivan Petition states, in part:

It is my opinion that the allegations against Mayor West are prohibiting him from doing the job we elected him to do.

The definition of misfeasance in office is any wrongful conduct that affects or interrupts or interferes with the performance of official duty.

... [Mayor West] also admitted soliciting internships for young men for his own personal uses.

... I have attached several documents stating more allegations.

(CP 6).

Three attachments were filed with the Sullivan Petition: (1) a copy of the Oath of Office signed by Mayor West on December 23, 2003, (2) a page containing four short paragraphs, with no title, author or other identifying information, and (3) a copy of a Spokesman-Review article by Karen Dorn Steele dated May 5, 2005. (CP 8-15).

B. Prosecutor's Ballot Synopsis

Pursuant to RCW 29A.56.130¹, the Spokane County Prosecuting Attorney filed a Petition for Approval of Ballot Synopsis and Determination of Sufficiency of Charges (hereinafter "Prosecutor's Petition") and a Ballot Synopsis of the Charges for the Recall of Mayor James E. West (hereinafter "Prosecutor's Ballot Synopsis") with the Spokane County Superior Court on May 31, 2005. (CP 1-20). The Prosecutor's Ballot Synopsis included three recall charges. (CP 19). Only Charge II is at issue in this appeal. It reads as follows:

Charge II: James E. West, Mayor of the City of Spokane, committed acts of misfeasance in that: He solicited internships for young men for his own personal uses.

(CP 19).

C. Sufficiency Hearing

Pursuant to RCW 29A.56.140, a hearing was held in Spokane County Superior Court before the Honorable Craig J. Matheson on June 13, 2005. During the sufficiency hearing, Judge Matheson questioned Ms. Sullivan "to determine the factual basis for [her] petition." (RP 33:6-8). Judge Matheson's inquiry revealed that Ms. Sullivan had little, if any, "knowledge of identifiable facts which support" her petition, *In re Recall*

¹ The text of the relevant statutes, RCW 29A.56.110 - .140, is set forth in Appendix A.

of Carey, 132 Wn.2d 525, 527, 939 P.2d 1221 (1991), other than “facts” gleaned from Spokesman-Review stories. (RP 3:15-31:11; 32:15-19; 32:23-33:1; 36:3-13).

The Spokesman-Review stories are, in turn, based on emails and online chats between Mayor West and an unidentified “consultant” hired by the Spokesman-Review to pose as a gay 18-year old male going by the name Brock Stewart (or “Moto-Brock”). This fictional character created by the newspaper is the young man referenced in Charge II. (CP 80-81).²

Judge Matheson invited Ms. Sullivan to submit the newspaper articles and other documents to the court during the sufficiency hearing. (RP 30:11-37:11). Over Mayor West’s objection, Ms. Sullivan was permitted to supplement the record with the following seven documents: (1) City of Spokane Personnel Policy, Electronic Communications, HR-52, (2) City of Spokane Personnel Policy, Email, HR-55, (3) a Spokesman-Review article by Mike Prager dated May 9, 2005, and an attached affidavit signed by Cherie Rodgers, (4) pages 5 through 9 of a document apparently printed from the Spokesman-Review website, (5) an email from Mayor West to “Mr. Stewart” dated March 21, 2005, (6) a Spokesman-Review article by Bill Morlin dated May 5, 2005, (7) pages 5

² Mayor West contends the Spokesman-Review stories are factually inaccurate and misrepresent the content of the actual emails and transcripts, most of which are not part of the record.

and 6 of a document apparently printed from the Spokesman-Review website including emails to and from "Brock Stewart" and Mayor West. (CP 58-84; RP 39:10-41:10).

D. Superior Court Decision

The superior court dismissed Charges I and III of the Prosecutor's Ballot Synopsis, but found Charge II legally and factually sufficient. (CP 85). The court did not rule on the adequacy of the Prosecutor's Ballot Synopsis, or make corrections to the Prosecutor's Ballot Synopsis, during the June 13, 2005 hearing. With respect to Charge II, Judge Matheson ruled as follows:

... I'm going to allow recall on Count II. The record that we have here today indicates that it is alleged based on identifiable facts that the mayor made an offer to an individual to either apply or actually offered a job. I think that letter [the March 21, 2005 email] is subject to interpretation. Either way, that it was somebody that was in the context of a social, quite social email exchange, exchange of pictures and that in my mind is improper use of the office.

(RP 45:18-46:1).

E. Judge's Charge

On June 14, 2005, the day following the hearing, Judge Matheson certified and filed a Ballot Synopsis of the Charge for the Recall of Mayor James E. West, Mayor of the City of Spokane. (CP 86-87). On June 15, 2005, Judge Matheson filed an Amended Ballot Synopsis of the Charge.

(CP 89-90). The Amended Ballot Synopsis includes the following charge, written by Judge Matheson (hereinafter "Judge's Charge"):

Between March 8, 2005 and April 9, 2005, Mayor James E. West used his elected office for personal benefit. On March 21, 2005, he authored a letter intending to help obtain a student internship with the City of Spokane for a person he believed to be an 18-year-old high school student. During a series of internet conversations, before and after the letter, Mayor West sent a photograph of himself to the person, raised issues of sex, discussed dating, and urged the person to keep mayor West's identity a secret. Mayor West admits these conversations. Offering to help obtain a student internship with the City of Spokane under these circumstances was an improper exercise of an official duty.

Very little factual information contained in the Judge's Charge was included in the Sullivan Petition or Prosecutor's Ballot Synopsis. Rather, the factual detail was apparently derived from documents submitted at the sufficiency hearing. Mayor West has had no opportunity to challenge the factual basis or legal sufficiency of the Judge's Charge.

F. Appeal

On June 27, 2005, Mayor West filed this appeal pursuant to RCW 29A.56.140 and RCW 29A.56.270. (CP 93-102). On June 28, 2005, Ms. Sullivan filed a Motion for Accelerated Review pursuant to RAP 18.12 which was granted. (CP 103-106).

//

//

III. ARGUMENT

The Washington State Constitution provides that the citizens of this state may seek removal of a public official through a recall election. "Recall is the electoral process by which an elected officer is removed before the expiration of the term of office." *Chandler v. Otto*, 103 Wn.2d 268, 270, 693 P.2d 71 (1984). Pursuant to § 33 of Article 1 of the Constitution, an "elective public officer of the state of Washington ... is subject to recall and discharge" if a petition demanding his or her recall alleges "that such officer has committed some act or acts of malfeasance or misfeasance while in office, or [] has violated his oath of office." This provision of the Constitution "requires a showing of cause before a recall will be allowed." *In re Recall of Ackerson*, 143 Wn.2d 366, 370, 20 P.3d 930 (2001) (citation omitted).

The charges in the Sullivan Petition and the Prosecutor's Ballot Synopsis allege misfeasance. (CP 6, 19). The charges do not allege Mayor West engaged in conduct constituting malfeasance or a violation of the oath of office. Misfeasance, for recall purposes, is defined as follows:

(1) "Misfeasance" ... in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner[.]

RCW 29A.56.110.

The Judge's Charge does not use the word "misfeasance" but alleges "an improper exercise of an official duty." (CP 89).

A. Statutory Framework

Laws governing the recall of elective public officers were first passed in 1913, amended in 1976 and 1984, and recodified in 2004. Currently, the procedures for filing a recall petition and initiating a recall election are specified in RCW 29A.56.110 - .270. The "legislature has limited the recall process so that public officials will be protected from petitions based on frivolous or unsubstantiated charges," *In re Recall of Kast*, 144 Wn.2d 807, 812-13, 31 P.3d 677 (2001) (citation omitted), and "from the harassment of recall elections grounded on ... mere insinuations." *Ackerson*, 143 Wn.2d at 371 (citation omitted).

RCW 29A.56.110 specifies information that must be included in a voter's recall charge. First, the charge must recite that the public officer "has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall." RCW 29A.56.110. Second, "[t]he charge shall state the act or acts complained of in concise language [and] give a detailed description including the approximate date, location, and nature of each

act complained of” *Id.* Third, the charge must “be signed by the person or persons making the charge ... and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.” *Id.*

A voter’s recall charge is initially filed with the appropriate elections officer (in this case, the Spokane County Auditor). RCW 29A.56.120. The elections officer then certifies and transmits the charge “to the preparer of the ballot synopsis” (in this case, the Spokane County Prosecuting Attorney). RCW 29A.56.120(2), 29A.56.130(1)(b). Within fifteen days of receipt of the voter’s recall charge, the designated preparer “shall formulate a ballot synopsis of the charge” and “certify and transmit the charges and the ballot synopsis to the superior court.” RCW 29A.56.130(1), (2).

Pursuant to RCW 29A.56.140, the superior court determines “(1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis.” “The court’s central purpose in the recall process is to determine whether the charges are factually and legally sufficient.” *In re Recall of Young*, 152 Wn.2d 848, 852, 100 P.3d 307 (2004).

Generally, to be factually sufficient, the petition must state in detail the acts complained of, and the petitioner must have knowledge of identifiable facts which support the charges. To be legally sufficient, the petition must state with specificity conduct amounting to misfeasance, malfeasance or violation of the oath of office.

Carey, 132 Wn.2d at 527 (citations omitted).

“An appeal of a sufficiency decision” by the superior court “shall be filed in the supreme court as specified in RCW 29A.56.270.” RCW 29A.56.140. This Court reviews the sufficiency of recall charges de novo, using the same criteria as the superior court. *Young*, 152 Wn.2d at 852. “Any decision regarding the ballot synopsis by the superior court is final.” RCW 29A.56.140.

B. Factual Sufficiency

To be factually sufficient, a recall charge must include a detailed description of the “acts complained of” and be based on “identifiable facts that support the charges.” *Carey*, 132 Wn.2d at 527. “Factual sufficiency means the facts must establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office (quantitative prong).” *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003) (citations omitted). “[T]he charge must on its face show the official acted wrongfully, improperly, unlawfully or negligently in the performance of his duties.” *Teaford v. Howard*, 104 Wn.2d 580, 586, 707 P.2d 1327

(1985) (emphasis added). “The facts must also be stated in concise language and provide a detailed description that includes the date, location and nature of each allegation (qualitative prong).” *Wasson*, 149 Wn.2d at 791 (emphasis added, citing former RCW 29.82.010, now recodified as RCW 29A.56.110). A recall “petition must describe the charges with sufficient precision and detail to enable the electorate and the challenged official to make informed decisions in the recall process.” *In re Recall of Zufelt*, 112 Wn.2d 906, 911, 774 P.2d 1223 (1989) (citation omitted).

This Court has consistently rejected charges that fail to include the requisite factual specificity. *See, e.g., Ackerson*, 143 Wn.2d at 374 (charge providing “no specifics as to when, where, or how the funds were converted” was factually insufficient); *In re Recall of Beasley*, 128 Wn.2d 419, 429-30, 908 P.2d 878 (1996) (charge that school board members made certain comments, without stating “to whom the comments were made, when they were made, [or] the context in which they were made” was factually insufficient); *In re Recall of Morrisette*, 110 Wn.2d 933, 935-37, 756 P.2d 1318 (1988) (charge that an official mishandled an unknown item of unknown ownership in an unknown manner found factually insufficient).

1. Charge II is factually insufficient because it does not include a detailed description of the alleged misfeasance.

Charge II was formulated by the Prosecuting Attorney based on an allegation in the Sullivan Petition, and is nearly identical to her charge. Ms. Sullivan alleged Mayor West “admitted soliciting internships for young men for his own personal uses.” (CP 6). Charge II alleges Mayor West “committed acts of misfeasance in that: He solicited internships for young men for his own personal uses.” (CP 19).

Charge II (like Ms. Sullivan’s charge) fails to include “a detailed description including the approximate date [and] location ... of each act complained of” as required by RCW 29A.56.110. It fails to specify when or where the alleged “solicitation” occurred. It provides no description of the nature or method of the alleged solicitation, and fails to identify the recipients of the alleged solicitation. In short, Charge II fails to describe the alleged misfeasance with the requisite factual specificity, and is therefore factually insufficient.

Moreover, the accusation that Mayor West “solicited internships for young men for his own personal uses” is vague and ambiguous at best, grammatically incorrect, and plainly inflammatory.³ How does one *solicit*

³ To “solicit” means, *inter alia*, “to approach for some immoral purpose, as a prostitute does.” WEBSTER’S NEW WORLD DICTIONARY (2d ed. 1974).

an internship? Is Charge II accusing Mayor West of *offering* internships to “young men”? What does “his own personal uses” mean (or imply)? The charge is rank with insinuation and innuendo and void of factual specificity.

2. **Charge II is factually insufficient because the allegation of personal motive is conjectural and conclusory.**

Allegations that are conjectural, conclusory, or unsupported by facts are factually insufficient. *In re Recall of Wade*, 115 Wn.2d 544, 550, 799 P.2d 1179 (1990). For example, in *Beasley*, recall charges were brought against school board members alleging they took certain actions “with the intent to intimidate” other board members. *Beasley*, 128 Wn.2d at 422. The court held “[t]he allegation of intent to intimidate is not an observed fact but is respondents’ conclusion.” *Id.* at 430.

Similarly, in this case, the allegation that Mayor West “solicited internships *for his own personal uses*” is conjectural, conclusory and unsupported by the facts. Neither the Sullivan Petition nor the Prosecutor’s Ballot Synopsis includes “identifiable” or “observed” facts demonstrating a personal motive (i.e., that Mayor West’s conduct was “*for his own personal uses*” or was intended to achieve a personal benefit). The allegation regarding Mayor West’s purpose or motive “is not an observed fact” – it is an unsubstantiated and unsupportable conclusion.

3. **Attachments to the Sullivan Petition do not remedy the factual insufficiency of the recall charge.**

Three attachments were filed with the Sullivan Petition: (1) a copy of the Oath of Office signed by Mayor West on December 23, 2003, (2) a page containing four short paragraphs, with no title, date, author or other identifying information, and (3) a copy of a Spokesman Review article by Karen Dorn Steele dated May 5, 2005. (CP 8-15). Ms. Sullivan referred to the attachments generally, stating: "I have attached several documents stating more allegations." (CP 6).

"If a petitioner chooses to refer to attached information, he or she must reasonably identify the information in such a manner to satisfy the specificity requirements of [RCW 29A.56.110]." *Wasson*, 149 Wn.2d at 792. Ms. Sullivan failed to do so. She made no effort "to parse out the relevant from irrelevant information" in the attachments or to "identify the legal violations and the facts that support those violations as required by [RCW 29A.56.110]." *Id.* Thus, this Court need not (and should not) consider the documents in determining factual sufficiency.

While it may be "proper in a recall case to consider documents" submitted by the petitioner "for the purpose of determining whether there is any factual basis for the charges," *Beasley*, 128 Wn.2d at 427 (emphasis added), "the sufficiency of a recall petition must be determined

from its face.” *Carey*, 132 Wn.2d at 527 (emphasis added, citation omitted). Ms. Sullivan’s general reference to documents attached to her petition does not remedy the factual and facial insufficiency of the recall charge.

Moreover, an examination of the three attached documents reveals no factual support for the allegation that Mayor West “solicited internships for young men for his own personal uses.” Neither Mayor West’s Oath of Office nor the Spokesman Review article mention internships at all. (CP 8, 10-15). The only document referencing an internship is the second attachment (with no title, date, author or other identifying information). (CP 9).

“The procedural safeguards of sufficiency, specificity and knowledge, established through case law and through legislation” are intended to protect public officials from “false or frivolous charges.” *Ackerson*, 143 Wn.2d at 372-73. If an unidentified and undated attachment, of unknown origin and authorship, is a sufficient basis for recall, then the constitutional and statutory requirements, as interpreted by this Court, are essentially meaningless.

C. **Personal Knowledge**

RCW 29A.56.110 requires that “the person ... making the charge ... have knowledge of the alleged facts upon which the stated grounds for

recall are based.” “Although there is no requirement that the petitioner have firsthand knowledge of the facts, he or she must have some knowledge of the facts underlying the charges.” *Wasson*, 149 Wn.2d at 791; *Ackerson*, 143 Wn.2d at 372. Specifically, “the petitioner must have knowledge of identifiable facts which support the charges.” *Carey*, 132 Wn.2d at 527. A simple belief that the charges are true is insufficient. *Beasley*, 128 Wn.2d at 425.

1. Ms. Sullivan’s “knowledge” is based on newspaper stories which are based on information from an unknown source .

Judge Matheson sought to determine the factual basis of Ms. Sullivan’s petition and the recall charges during the sufficiency hearing. (RP 33:6-8). See *In re Recall of Anderson*, 131 Wn.2d 92, 95, 929 P.2d 410 (1997). Judge Matheson’s inquiry revealed that Ms. Sullivan had little, if any, “knowledge of identifiable facts which support” Charge II, *Carey*, 132 Wn.2d at 527, other than “facts” gleaned from Spokesman-Review stories. (RP 3:15-31:11; 32:15-19; 32:23-33:1; 36:3-13). The applicable Spokesman-Review stories are, in turn, based on transcripts of alleged online chats between Mayor West and an unidentified “consultant” hired by the Spokesman-Review to pose as a gay 18-year old.

The Spokesman-Review has not disclosed the identity of their “consultant” and has admitted at least one important transcript is

incomplete. In an article published July 3, 2005 (after the sufficiency hearing and the certification of the Judge's Charge), the newspaper admitted "[t]he ending portion of the March 8 chat was lost because of technical problems." (Appendix B). The missing portion purportedly "included West for the first time raising the possibility of an internship in his office." *Id.* The newspaper also added an "Editor's note" to its website publication of the March 8, 2005 online chat. According to the Editor:

The final two minutes of the chat are not transcribed here because a technical problem prevented the consultant from recording it. However, the consultant provided the newspaper with a summary of the entire conversation for its records. In the last minute of this chat, according to the consultant, Jim West offered a potential internship to Moto-Brock.

*Id.*⁴

Thus, Ms. Sullivan's "knowledge of identifiable facts" comes primarily from newspaper stories containing online transcript excerpts prepared by an unknown person. The transcripts are admittedly incomplete. Unverified information from an unnamed source contained in newspaper articles is not a sufficient factual basis to support a recall election. *See Beasley*, 128 Wn.2d at 429-430 (charge alleging school board members made certain improper comments found factually

⁴ The March 8th online chat is particularly significant because the date is referenced in the Judge's Charge. (CP 86, 89).

insufficient where the petitioner testified “that he obtained the comments from a newspaper article, and that their ultimate source was [the school superintendent], but he did not reveal the source of [the superintendent’s] knowledge.”⁵

D. Legal Sufficiency

To be legally sufficient, a recall charge “must state with specificity substantial conduct clearly amounting to misfeasance.” *In re Recall of Lakewood City Council Members*, 144 Wn.2d 583, 585, 30 P.3d 474 (2001) (citation omitted). In other words, to satisfy the legal sufficiency requirement, the charge must establish “a prima facie showing of misfeasance.” *Cole v. Webster*, 103 Wn.2d 280, 285, 692 P.2d 799 (1984) (emphasis added). “Misfeasance in office” is conduct that “affects, interrupts, or interferes with the performance of official duty” or “the performance of a duty in an improper manner.” RCW 29A.56.110(1).

“A charge must also sufficiently specify why the challenged acts constitute misfeasance” *Beasley*, 128 Wn.2d at 425 (emphasis added). If the recall petition “does not identify a standard, law, or rule which would make [the elected official’s] conduct wrongful, improper or unlawful,” then “the recall petition does not present a *prima facie* case of

⁵ This Court has also found the petitioner’s knowledge inadequate when based solely on something told to them by a third party. *Morrisette*, 110 Wn.2d at 936.

misfeasance” and is therefore legally insufficient. *Zufelt*, 112 Wn.2d at 914.

Finally, the legal sufficiency requirement “means that an elected official cannot be recalled for appropriately exercising the discretion granted him or her by law.” *Chandler*, 103 Wn.2d at 274 (citations omitted). “[W]here a discretionary act is the focus of the controversy, recall petitioners must show that the official exercised discretion in a manner which was manifestly unreasonable.” *Greco v. Parsons*, 105 Wn.2d 669, 672, 717 P.2d 1368 (1986) (citation omitted). The failure to identify a specific law, policy, or procedure which would make the challenged act unlawful “raises the possibility that the acts in question were discretionary acts” and renders the petition insufficient. *Teaford*, 104 Wn.2d at 587.

1. **Charge II is legally insufficient because it does not allege conduct interfering with the performance of official duties or the performance of a duty in an improper manner.**

There are no facts showing Mayor West offered the fictional “Mr. Stewart” an internship. In fact, documents submitted at the sufficiency hearing show Mayor West merely invited Mr. Stewart to apply for an internship. Specifically, on March 21, 2005, Mayor West sent an email that states, in part:

If you are interested [in an internship] please contact Melissa Murphy in my office at 626-6250. She will have you fill out an application which will need your parent's and school official's approval.

(CP 78).

There are no facts showing Mayor West's alleged conduct (i.e., "soliciting internships") affected, interrupted or interfered with his official duties. Indeed, sending an email simply inviting an individual to apply for an internship (neither offering nor promising a position) is entirely consistent with the performance of official duties. The bare allegation that Mayor West sent the email "for his own personal uses" does not show conduct affecting, interrupting or interfering with his official duties.

Likewise, there are no facts showing Mayor West performed a duty in an improper manner. Ms. Sullivan failed to identify a "standard, law or rule which would make his conduct wrongful, improper or unlawful," *Zufelt*, 112 Wn.2d at 914, or otherwise explain "why the acts alleged constitute misfeasance." *Ackerson*, 143 Wn.2d at 375. Thus, she has failed to establish the existence of an applicable duty, rendering the petition and charge legally insufficient.

"Mr. Stewart" (obviously not a real person) never actually applied for an intern position and, of course, was not hired. Merely sending an email to a person (real or fictitious) who has expressed an interest in an

internship does not constitute “substantial conduct clearly amounting to misfeasance.” *Lakewood City Council Members*, 144 Wn.2d at 585.

2. Charge II is legally insufficient because there are no facts showing Mayor West exercised his discretion in a manifestly unreasonable manner.

The internship program at the City of Spokane provides young people an opportunity to work at City Hall while in school. Intern positions are unpaid and of short duration. Applications require parental approval, and must include recommendations from school officials. (Appendix C). Intern applicants are interviewed by City staff members, not the Mayor. Interns generally perform low-level duties, and do not work directly with the Mayor.

Inviting an individual to apply for an internship is a discretionary act. Thus, to establish “misfeasance in office,” Ms. Sullivan must show Mayor West exercised his discretion “in a manner which was manifestly unreasonable.” *Greco*, 105 Wn.2d at 671. She has not, and cannot do so.

Mayor West had an online relationship with the fictional “Mr. Stewart.” Their relationship was confined to a series of emails and internet chats during which they discussed personal issues. There are no facts showing Mayor West participated in these online chats while at City Hall or using a City computer. And only one of the emails was sent from

City Hall – the March 21st email inviting Mr. Stewart to apply for an internship.

Mayor West merely invited someone he met online to apply for an internship. Inviting a friend, relative, or acquaintance (in this case, an imposter hired by the Spokesman-Review) to apply for an unpaid, short-term internship cannot be deemed manifestly unreasonable. Such an innocuous act should not subject a public official to recall.

E. Authority of Superior Court

In addition to considering the factual and legal sufficiency of the charges, the superior court shall determine “the adequacy of the ballot synopsis,” and “correct any ballot synopsis it deems inadequate.” RCW 29A.56.140. Neither the recall statutes nor case law provide much guidance regarding the nature of the adequacy determination, or the scope of the court’s authority to “correct” a ballot synopsis.

However, a “fundamental rule of statutory construction is that the legislature is deemed to intend a different meaning when it uses different terms.” *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.2d 196 (2005). Under RCW 29A.56.130(1) and (1)(b), the prosecuting attorney is required to “formulate a ballot synopsis of the charge” and is the designated “preparer” of the ballot synopsis. (Emphasis added). In contrast, under RCW 29A.56.140, the superior court is authorized to

“correct any ballot synopsis it deems inadequate.” (Emphasis added)
Under the recall statutes, the terms “correct,” “formulate” and “prepare” are not defined, but must be interpreted as having separate meanings.

When the legislature has not specifically defined a statutory term, this Court applies “its common meaning, which may be determined by referring to a dictionary.” *Quadrant Corp. v. State Growth Management Hearings Bd.*, 154 Wn.2d 224, 239, 110 P.2d 1132 (2005). While there are many dictionary definitions of “correct,” “formulate” and “prepare”, the following examples from Webster’s Dictionary illustrate the terms’ general meanings: To “correct” means to “remove errors.” “Correct implies taking action to remove errors, faults, deviations, defects.” To “formulate” means to “express in a systematic way” or “to put into a systematized statement or expression.” To “prepare” means to “make ready” or “to put into written form.” WEBSTER’S NEW WORLD DICTIONARY (2d ed. 1974); WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (1991).

Under RCW 29A.56.140 the superior court is limited to making corrections to the ballot synopsis in order to remedy inadequacies. The court is not authorized to “formulate,” compose or draft a recall charge, or to “prepare” or write a ballot synopsis. Since the sufficiency of a charge is evaluated on its face, *Teaford*, 104 Wn.2d at 586, corrections to the ballot

synopsis should not be substantive. A “corrected” ballot synopsis should provide no more information than the petitioner presents in the statement of charges. *Carey*, 132 Wn.2d at 527 (refusing to consider charges not asserted in the petition).

1. The superior court exceeded its authority to “correct” the ballot synopsis by re-writing the recall charge.

In this case, the superior court composed an entirely new charge including information not contained in either the Sullivan Petition or the Prosecutor’s Ballot Synopsis. The allegations in the superior court’s formulation of the charge are, for the most part if not entirely, based on documents solicited by Judge Matheson during the sufficiency hearing. (RP 30:11-38:19). Over Mayor West’s objection, Judge Matheson permitted the record to be supplemented on June 13, 2005, stating the documents were admitted solely for the purpose of evaluating Ms. Sullivan’s knowledge. (RP 37:7-38:19, 40:16-42:14). Then, relying on the documents he solicited, Judge Matheson crafted a new charge after the hearing. By completely re-writing the charge and including more information than Ms. Sullivan and the Prosecuting Attorney presented in their charges, Judge Matheson exceeded his authority to “correct” the ballot synopsis.

Moreover, the court did not rule on the adequacy of the ballot synopsis or make any corrections during the sufficiency hearing. Rather, Judge Matheson certified his Ballot Synopsis and Amended Ballot Synopsis on June 14th and 15th, respectively, thereby depriving Mayor West of an opportunity to challenge the sufficiency of the re-written charge. Since the re-written charge was not prepared until after the sufficiency hearing, Mayor West has had no opportunity to contest it.

The superior court's approach conflicts with fundamental due process considerations and basic statutory requirements (i.e., that the charge be verified under oath by the petitioner, that the public official be given notice, and that a hearing be held). RCW 29A.56.110 - .140. Although the superior court may consider documents submitted by the petitioner "for the purpose of determining whether there is any factual basis for the charges" presented, *Beasley*, 128 Wn.2d at 427, the court may not re-write the charges incorporating new information.

Finally, the language used in the Certification of Ballot Synopsis and Certification of Amended Ballot Synopsis reflects the court's error. The Certification of Ballot Synopsis states Judge Matheson "prepared" the corrected ballot synopsis "pursuant to the provisions of RCW 29A.56.130." (CP 87). The reference to RCW 29A.56.130 suggests the court misunderstood its function. RCW 29A.56.130(1) authorizes the

prosecuting attorney “to formulate a ballot synopsis.” Under RCW 29A.56.130(1)(b), the prosecuting attorney is the designated “preparer” of the ballot synopsis. (Emphasis added). The court apparently recognized its error, deleting the reference to RCW 29A.56.130 in the Certification of Amended Ballot Synopsis. (CP 89). Still, the amended certification states the ballot synopsis was “prepared by the Superior Court pursuant to statute.” (CP 90). There is no such statute. Pursuant to RCW 29A.56.140, the court shall merely “correct,” “certify and transmit” the ballot synopsis.

2. Documents submitted at the sufficiency hearing do not provide a factual or legal basis for the recall charges.

Two City of Spokane Personnel Policies were admitted during the sufficiency hearing. (CP 58-67). Both policies relate to use of the city’s “electronic communications” and computer equipment, including email and internet use. None of the recall charges explicitly accuse Mayor West of violating either policy. However, the Judge’s Charge may be read to imply that Mayor West used the city’s email and/or internet capabilities “for personal benefit” “[b]etween March 8, 2005 and April 9, 2005.” If that is the intended implication, it is factually unsupported and simply wrong.

Ms. Sullivan submitted copies of emails between “Brock Stewart” and “Jim” dated March 8-17, 2005, two copies of an email from Mayor

West to "Mr. Stewart" dated March 21, 2005, and an affidavit signed by Cherie Rodgers regarding the March 21st email. (CP 72, 78, 82-84). There is no indication the emails dated March 8-17, 2005, were sent to or from an email address at the City of Spokane. Only one of the emails has a City Hall address - the email dated March 21, 2005. In that email Mayor West invited "Mr. Stewart" to apply for an internship with the City of Spokane. The Rodgers affidavit confirms that the March 21st email was sent from City Hall. Neither the March 21st email nor the Rodgers affidavit provides factual support for the allegations that Mayor West "used his elected office for personal benefit" (CP 89) or "solicited internships ... for his own personal uses." (CP 6, 19).

Ms. Sullivan also submitted pages 5 through 9 of a document apparently printed from the Spokesman-Review website. (CP 74-76). The document includes excerpts of one or more online chats, as well as summaries of alleged conversations and editorial comments. *Id.* It is important to note that the court file does not include actual transcripts of online chats, and there is no electronic record of the time, place or date of the alleged chats. Rather, the court file includes portions of excerpts of transcripts selected by the Spokesman-Review and Ms. Sullivan.

There is nothing in the record showing Mayor West participated in the alleged online chats while at City Hall or using a City computer. In

fact, as pointed out to the trial court, the online chats “took place outside of business hours, outside of City Hall, on a secure website” (RP 13:5-7) “where there is an expectation of privacy.” (RP 24:24-25).

The online chats and all but one of the emails constitute private conduct. This Court has not determined “whether the phrase ‘in office’ contemplates only acts committed by a public officer in their official capacity, or whether it might include private acts committed outside of any officer’s official duties, committed during their term of office.” *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 769, 10 P.3d 1034 (2000) (discussing definition of malfeasance). This case illustrates why the private conduct of public officers should not be sufficient for recall. Mayor West’s sexuality, private affairs and presumptively private online conversations and emails have nothing to do with the performance of his official duties. And yet these are the true focus of the recall effort. (*See* CP 10-15, 69-76, 80-84).

Finally, Ms. Sullivan submitted two Spokesman-Review articles at the sufficiency hearing. (CP 68-71, 79-81). The first article (dated May 5, 2005) was one of the initial stories published by the Spokesman-Review, and describes the newspaper’s efforts to “investigate” Mayor West’s sexuality. (CP 79-81). The second article (dated May 9, 2005) describes a misunderstanding between Mayor West and Councilwoman

Cherie Rodgers. (CP 68-71). Neither provides any factual basis for the Judge's Charge, Charge II or the Sullivan Petition.⁶

IV. CONCLUSION

Mayor West respectfully requests this Court reverse the superior court's recall decision regarding Charge II because the charge is neither factually nor legally sufficient. In addition, Mayor West requests this Court rule that the superior court exceeded its authority by writing and certifying an entirely new recall charge. Neither Charge II nor the Judge's Charge is appropriate for inclusion in a petition for a recall election.

DATED this 28 day of July 2005.

ETTER, McMAHON, LAMBERSON & CLARY, P.C.

By: 

FILED AS ATTACHMENT
TO E-MAIL

William F. Etter, WSBA No. 09158
Susan W. Troppmann, WSBA No. 22235
Attorneys for James E. West, Mayor of the City of Spokane

HOLDEN & ORESKOVICH, P.S.

By: 
For

Carl J. Oreskovich, WSBA No. 12779
Attorneys for James E. West, Mayor of the City of Spokane

⁶ A third article was submitted with Ms. Sullivan's original petition. (CP 10-15). It contrasts Mayor West's sexuality with his record in the state legislature and, like the other articles, provides no factual basis for the recall charges.

CERTIFICATE OF SERVICE

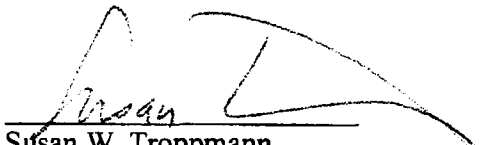
I hereby certify that on the 24th day of July, 2005 I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Shannon M. Sullivan
1128 W. Nebraska Avenue
Spokane, WA 99205

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy (Facsimile)

Robert B. Binger
Senior Deputy Prosecuting
Attorney
Spokane County Prosecuting
Attorney
1115 W. Broadway Avenue
Spokane, WA 99260-3672

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy (Facsimile)


Susan W. Troppmann

FILED AS ATTACHMENT
TO E-MAIL

APPENDICES

IENT

RCW 29A.56.110

Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.

For the purposes of this chapter:

- (1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
 - (a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and
 - (b) Additionally, "malfeasance" in office means the commission of an unlawful act;
- (2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

APPENDIX A

RCW 29A.56.120

Any person making a charge shall file it with the elections officer whose duty it is to receive and file a declaration of candidacy for the office concerning the incumbent of which the recall is to be demanded. The officer with whom the charge is filed shall promptly (1) serve a copy of the charge upon the officer whose recall is demanded, and (2) certify and transmit the charge to the preparer of the ballot synopsis provided in RCW 29A.56.130. The manner of service shall be the same as for the commencement of a civil action in superior court.

RCW 29A.56.130

- (1) Within fifteen days after receiving a charge, the officer specified below shall formulate a ballot synopsis of the charge of not more than two hundred words.
 - (a) Except as provided in (b) of this subsection, if the recall is demanded of an elected public officer whose political jurisdiction encompasses an area in more than one county, the attorney general shall be the preparer, except if the recall is demanded of the attorney general, the chief justice of the supreme court shall be the preparer.
 - (b) If the recall is demanded of an elected public officer whose political jurisdiction lies wholly in one county, or if the recall is demanded of an elected public officer of a district whose jurisdiction encompasses more than one county but whose declaration of candidacy is filed with a county auditor in one of the counties, the prosecuting attorney of that county shall be the preparer, except that if the prosecuting attorney is the officer whose recall is demanded, the attorney general shall be the preparer.
- (2) The synopsis shall set forth the name of the person charged, the title of the office, and a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the preparer shall certify and transmit the exact language of the ballot synopsis to the persons filing the charge and the officer subject to recall. The preparer shall additionally certify and transmit the charges and the ballot synopsis to the superior court of the county in which the officer subject to recall resides and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges.

RCW 29A.56.140

Within fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW 29A.56.270. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. The court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate.

Fact check

In the past week, Spokane Mayor Jim West confirmed two television interviews, answered questions from *The Insider*, and submitted a guest column for *The Spokesman-Review's* Opinion pages. In the process, West made several assertions about the newspaper's reporting that are not true.

West claim: The Spokesman-Review hired an "Imposter with the explicit purpose of trying to lure me into committing an illegal act."

Fact: The newspaper hired a forensic computer expert to verify the story of a real Spokane teenager who came forward in September 2004 to say that he met West online at Gay.com, had dinner with him at a north Spokane restaurant and then engaged in consensual sex.

Although the newspaper had been investigating allegations of sexual abuse against West dating back to the 1970s, it did not know West was online until the teenager told his story.

The young man, who is now 19 and lives and works in Spokane, told the newspaper that West was online at Gay.com using the screen names "Cobra82nd" and "Right81-Guy." The only way to verify the true identity of those names was to capture conversations on the Web site, which required computer technology that newspaper reporters did not - and still do not - have.

The computer expert, a former federal agent, was not told to lure West - only to engage in conversation. Initially, the expert was not even told of the suspected identity of Cobra82nd and Right81-Guy. He was asked to determine the identity on his own, which he did through ensuing online chats.

The expert also was instructed to contact law enforcement authorities immediately if he found illegal activity on the Web site.

West claim: The computer expert, using the name "Moto-Brock," raised the subject of sex first.

Fact: Every online conversation between West and Moto-Brock was captured by the computer expert and provided to *The Spokesman-Review*. All of that material is posted on the newspaper's Web site at www.spokesmanreview.com. The only information that has been withheld are the names of people who asked the newspaper for anonymity.

the identity of people who requested anonymity. The chats that were recorded in their entirety by the computer expert were posted on the newspaper's Web site. The ending portion of the March 8 chat was lost because of technical problems, but the expert provided the newspaper a summary of the conversation, which included West for the first time raising the possibility of an internship in his office.

On March 9, Moto-Brock asked West if he decided "what to do about the internship with your company?"

Using the screen name Jmselton, West replied: "I'm still thinking."

Moto-Brock: "R u worried cause I'm gay?"
Jmselton: "I may ask a friend to get you an internship with his organization. You may like it better. Not because you are gay, but because you will know that I like guys. I like you a lot. But I'm also quite a bit older than you."

Moto-Brock: "I understand."

In subsequent online chats, West encouraged Moto-Brock to apply for an internship at City Hall.

West and Moto-Brock had the following conversation on March 29:

Jmselton: "But then if you get that intern thing you'll be busy all day."

Moto-Brock: "That is true."

Jmselton: "Maybe I'll see you there sometime when I go up there for business."

Moto-Brock: "Well hopefully I will know what u look like by then so I know it's u!"

Jmselton: "When are you starting?"

Moto-Brock: "I'd start as soon as they want me."

Jmselton: "I'll ask the Mayor if you are good looking?"

THE SPOKESMAN-REVIEW.COM

Thursday, July 14, 2005

A SPOKESMAN-REVIEW INVESTIGATIVE REPORT

Online chat: 3/8/05

moto-brock and jmselton

© The Spokesman-Review 2005

This chat took place through AOL Instant Messenger, where Jim West used the screen name jmselton, an apparent reference to his name, James Elton West. The screen name Moto-Brock was assumed by a forensic computer consultant working for The Spokesman-Review, posing as a teenager online. For more on this part of the investigation, see the story: [Online relationships](#).

Full coverage
The latest stories, background information, email and chat transcripts, interviews and reader responses.
[Full coverage »](#)

Editor's note: The final two minutes of the chat are not transcribed here because a technical problem prevented the consultant from recording it. However, the consultant provided the newspaper with a summary of the entire conversation for its records. In the last minutes of this chat, according to the consultant, Jim West offered a potential internship to Moto-Brock.

Appendix B-2

City of Spokane High School Intern Application

Please type or print legibly. The application must be filled out completely to be considered.

STUDENT NAME (First, Middle, Last) _____

HOME ADDRESS _____

CITY/ZIP CODE _____
 (_____) _____

HOME PHONE _____

E-MAIL ADDRESS _____

SOCIAL SECURITY NUMBER _____
(Required before application can be accepted.)

DATE OF BIRTH _____ Age _____
 SEX: _____ MALE _____ FEMALE

APPLICANT SIGNATURE _____ Date _____

PARENT/GUARDIAN SIGNATURE _____ Date _____

NAME OF PARENT(S) OR GUARDIAN _____

PARENT/GUARDIAN CONTACT NUMBERS:
 Day Phone: _____

Eve. Phone: _____

Cell Phone: _____

email address: _____

SCHOOL NAME _____

GRADE _____ PRINCIPAL _____

WEEKS YOU CANNOT INTERN _____
*(Final exams, sports, family obligations, etc.
 Please give this section careful consideration.
 We cannot reschedule you if you cancel.)*

I authorize, by my signature, the City of Spokane and/or its designated representatives, to use photographs of my child in any City of Spokane authorized publication. I understand that such photographs will be held in files open to the public and have agreed to the taking of these photographs without compensation or payment.

Recommendations

PRINCIPAL: _____

COMMENTS: _____

TEACHER/COUNSELOR: _____

COMMENTS: _____

HOMESCHOOL INSTRUCTOR: _____

COMMENTS: _____
