

STEPHEN K. EUGSTER

2418 West Pacific Avenue
Spokane, Washington 99201

Tel (509) 624-5566 / Fax (866) 656-2341

email: eugster@eugsterlaw.com

September 10, 2008

Hand Delivered

Steven J. Tucker
Spokane County Prosecuting Attorney
1100 W. Mallon Avenue
Public Safety Building
Spokane, WA 99260-2043

**Re: Death of Jo Ellen (Patterson) Savage on April 8, 2006,
River Park Square Parking Garage, Spokane, Washington**

Dear Mr. Tucker;

Last week an article was published in the Spokesman - Review about the Federal Bureau of Investigation and its efforts regarding the River Park Square matter.¹ In it, staff writers Jonathan Brunt and Jim Camden reported:

Federal attorneys who investigated several controversies surrounding the downtown parking facility said Friday no federal charges apply in the April 2006 death of Jo Ellen Savage, but County Attorney Steve Tucker should decide whether state laws on negligent homicide apply.

‘There are, of course, various degrees of manslaughter that may be of some concern,’ said Robert Westinghouse, criminal chief for the U.S. attorney's office in Western Washington. ‘We pass no judgment, again, because that it is outside our purview.’

It is telling and significant that concerns about the possibility of criminal conduct came up and were mentioned and addressed by the FBI concerning possible criminal liability for the death of Mrs. Savage at the River Park Square Parking Garage.

The FBI pointed to you. It said: “County Attorney Steve Tucker should decide whether state laws on negligent homicide apply.”

¹ *Garage Probe Uncovers No Fraud - U.S. Attorney's Office Ends RPS Investigation*, Spokesman-Review A-1, September 6, 2008.

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I wrote to you about the death of Jo Ellen (Patterson) Savage on May 12, 2006, and again on June 8, 2006. My letters are enclosed.

I pointed out that crime of manslaughter in the second degree under Washington law may have been committed. A person is guilty of manslaughter in the second degree "when, with criminal negligence, he causes the death of another person." RCW 9A.08.010.

A person acts with "criminal negligence" "when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation." RCW 9A.08.010(d).

The facts are abundantly clear: They show there was probable criminal negligence in the death of Mrs. Savage. That is to say, persons in control of the River Park Square Parking Garage, people who had redeveloped the River Park Square Parking Garage and made it available to the City of Spokane Parking Public Development Authority, knew or should have been "aware of a substantial risk" that "wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation."

What is known? What is known is that there was a substantial risk that one of the parking garage "spandrels" would fail, as it did when Mrs. Savage's car broke through a spandrel and plunged to the deck of parking garage exit brutally and slowly killing Mrs. Savage. She died trapped in her crushed vehicle.

It is known that this "failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation."

The facts of Mrs. Savage's sad, painful and unnecessary death establish, for any reasonable mind, that criminal negligence is clearly indicated in her death. Manslaughter in the second degree should be charged as to those in violation of the law.

In my letter of June 8, 2008 I sent a copy of a story published in The Spokesman - Review by Jonathan Brunt entitled "Report cited 'problem' with RPS Walls" published Wednesday, June 7, 2006. I also provided you with the July 1993 report by Atwood - Hinzman, Inc. and Richard Atwood (which was in large part the basis for the story and the headline), and a July 21, 1993 letter to Mr. Atwood and his firm from Scott L. Walters of Budinger & Associates. The letter preceded the Atwood Report.

In my letter I told you:

The article and the Atwood Report show that despite the "engineering analysis" of the panels in the River Park Square Garage several "barrier" panels had failed before Mr. Atwood's report in 1993.

Mr. Brunt reports that "[a] 1990 study found that 45 barriers in the garage were cracked . . . the garage had 20 barriers constructed to replace 18 that were beyond repair."

...

Now we know more:

1. It is now known that many RPS barrier panels had broken before 1990.
2. We know that even though the panels may meet a 6000-pound impact load, the panels failed in the past prior to 1993 and continued to fail.
3. We know that issues about the location of the rebar in the panels had arisen as early as 1993 as shown in the Atwood Report.
4. We know there was a panel failure in 1991.
5. We know there was a panel failure in circa August – September 1999. [²]
6. We know that Jo Ellen Savage died because of a panel failure on April 8, 2006.

It is beyond any doubt, the owners of River Park Square knew the clear danger that RPS barrier panels would not prevent a car from falling off a parking deck of the parking garage.

It may also well be that City of Spokane officials knew of these matters. After all, the city became the owner of the garage for a time and was involved in rebuilding the garage in 1998 - 1999 so the garage could be leased and eventually owned by the city.

What we know shows, beyond any doubt, there may be culpable criminal conduct, perhaps in the form of criminal negligence, regarding the death of Jo Ellen Savage.

At the time, I suggested to you (and to the judges of the Spokane County Superior Court) that there were "grounds for the impanelment of the grand jury to investigate the

² I have the name and address of the person who told me about the panel failure in 1999. He was there. He was working on the garage at the time. The failure of the panel according to what he told me was not disclosed.

Steven Tucker
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possibility of criminal conduct in the death of Jo Ellen Savage.” I asked you and the judges to impanel a grand jury.

The judges declined. And so did you. In fact, you wrote this:

I recommend that you forward your letters of May 12, 2006 and June 8, 2006, to the appropriate law enforcement agencies for review.^[3]

I certainly hope you don't respond to this letter in such a condescending and apparently ignorant fashion. You are the “appropriate law enforcement agency” to take action regarding the criminal implications of the death of Mrs. Savage.

This time, I suggest and request that you conduct the investigation which should establish that what I tell you and have told you is true. And that afterward, you file criminal charges of manslaughter in the second degree against those individuals who were criminally negligent in the death of Mrs. Jo Ellen (Patterson) Savage.

Sincerely,



Stephen K. Eugster

SKE/ske

Copies plus enclosures to:

Judges of the Spokane County Superior Court
Spokesman - Review
Associated Press

³ See your letter to me of June 13, 2006, enclosed.

EUGSTER LAW OFFICE

A Professional Services Corporation
423 WEST FIRST AVENUE, SUITE 100
MINNESOTA - OAKLEY BUILDINGS
SPOKANE, WASHINGTON 99201

TEL. (509) 624-5566
FAX (509) 838-4274
www.eugsterlaw.com

Stephen K. Eugster
eugster@eugsterlaw.com

Cynthia Lawson, Paralegal
clawson@eugsterlaw.com

May 12, 2006

Steven J. Tucker
Spokane County Prosecuting Attorney
1100 W. Mallon Avenue
Public Safety Building
Spokane, WA 99260-2043

**Re: River Park Square Parking Garage – Grand Jury
The Tragic and Avoidable Death of Jo Savage
Criminal Wrongdoing?**

Dear Mr. Tucker:

Introduction / Summary

I write to ask you to take action to cause a grand jury to be impaneled to inquire into whether there was any criminal wrongdoing concerning the death of Jo Savage of Pullman, Washington at the River Park Square Parking Garage on April 8, 2006.

The Law

As the Prosecuting Attorney of Spokane County, State of Washington, you have authority to cause the judges of the Spokane County Superior Court to impanel a grand jury. Indeed, I think you have the duty to cause the impanelment of a grand jury from time to time. You have a duty to act here, as I shall describe.

RCW 10.27.030 Summoning grand jury

No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its

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opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause. [Emphasis added.]

You as the public attorney for Spokane County have a good cause to seek the impanelment of the grand jury by the judges of the Spokane County Superior Court.

The Tragic Death of Jo Savage

On April 8, 2006, Jo Savage, a 62 year-old resident of Pullman, Washington, died as the result of a failure of a wall panel at the River Park Square Parking Garage in downtown Spokane, Washington.

Mrs. Savage's death was tragic and obviously painful for her.

Her death would not have happened if those in control of the garage had taken action to protect people parking in the garage from accidentally hitting a parking deck wall and going off a garage parking deck.

Jo Savage's death could have been avoided. Her death should have been avoided.

Good Cause to Call for the Impanelment of a Grand Jury

I write to you as a concerned citizen and a person who has significant familiarity with the River Park Square Parking Garage.

I have been involved in the River Park Square Project since approximately 1994 and was intimately involved in the River Park Square Parking Garage matter while I was a member of the Spokane City Council from 2000 to the end of 2003.

In the time of troubles of the financial aspects of the garage, I asked you to take action to look into potential wrongdoing regarding the financial undertakings of the garage and the involvement of the City of Spokane in the financing fo the garage.

You chose not to take action. You were not alone in doing so. Your predecessor also chose not to take action.

This time the issues do not deal with possible criminal wrongdoing regarding financial matters.

No, this time the issues deal with potential criminal wrongdoing regarding the tragic and painful death of an individual.

The exterior walls of the River Park Square Parking Garage consist of independently attached wall panels or "spandrels." Each of the spandrels is shaped like an L with equal length from the curved angle of the L.

The bottom part of the L is attached to the deck of the garage. The upper part of the L extends

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from the horizontal part through a curved line then straight upward for about four feet. Each spandrel is attached to the garage parking deck so that it extends at the point of the curve approximately a foot and a half.

There is no barrier inside of the parking garage which would prevent a motor vehicle from driving up on the lower part of the spandrel and hitting the upper part of the spandrel.

There are approximately 340 separate spandrels making up the exterior walls of the parking garage decks. Apparently each spandrel is the same as each other spandrel – at least this would probably be true with regard to the spandrels which made up the garage prior to its expansion in 1999.

In 1991, one of the spandrels failed and broke with parts of the spandrel landing on a vehicle on Spokane Falls Boulevard. That vehicle was owned by Vicky Gould, a Spokane resident. She is fortunate not have been in the vehicle when parts of the spandrel fell off the garage and onto her vehicle.

Again in 1999, I understand through a witness whose name I will share with you at the appropriate time, a spandrel failed. This time the witness advised me a car drove into the spandrel and the spandrel broke. The car did not go off the deck of the garage. The spandrel supposedly broke when a contractor was in possession of the garage and was in the process of enhancing the garage for transfer to the Downtown Spokane Foundation and concomitant lease to an adjuvant municipal corporation of the City of Spokane, the Spokane Parking Public Development Authority.

On April 8, 2006, Mrs. Savage's car bumped the spandrel in front of the parking stall she had turned into and then proceeded off the deck of the garage, falling with her in the car to the entry/exit area of the garage on Spokane Falls Boulevard. Mrs. Savage, as you know, died approximately three hours after the fall.

(Just to the east of the area where Mrs. Savage and her vehicle landed, the Rock City Grill conducts part of its restaurant on the sidewalk immediately beneath the spandrels on the north sides of the parking decks – over eight floors of them.)

It would seem to any reasonable person that the failure of a spandrel 1991 should have been the subject of deep concern and testing. Each spandrel obviously is intended to serve as a barrier with regard to a vehicle which might attempt to go up onto it and drive out from the garage.

Apparently, a spandrel failed again in 1999. If the a spandrel again failed and the failure could have caused death, it would seem a person in possession and control should have taken action.

I suspect that it was known or should have been known that the spandrels were dangerous – that they did not do what they were intended to do which was to keep vehicles from accidentally driving off a garage parking deck. That it was known or should have been known that the spandrels were a danger to the life of a person parking in the garage and the life of a person using an area below the spandrels at the exit/entrance to the garage and the sidewalk walkway and restaurant areas below.

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The public needs to know whether the circumstance of Mrs. Savage's death and the circumstances pertaining the spandrel and the spandrel which should have prevented her death is so extensive that the failure of a spandrel may in fact involve criminal negligence. If this standard has been violated, that is, if there is criminal negligence, then certainly the death of Jo Savage may be the subject of charges of manslaughter. *See* Appendix and RCW 9A.32.070. And see, RCW 9A.08.010 (d) Criminal Negligence.

I believe that you, as the Chief Law Enforcement Officer of the State of Washington in Spokane County, have an obligation to ask the Spokane County Superior Court Judges for an impanelment of a grand jury to inquire into and investigate the death of Jo Savage at the River Park Square Parking Garage on April 8, 2006.

Independent of whatever you may do, the judges of the Superior Court of the State of Washington should also act on their own to impanel a grand jury. RCW 10.27.030. Thus, a copy of this letter is being sent to each judge.

Very truly yours,

EUGSTER LAW OFFICE PSC

/s/ Stephen K. Eugster

Stephen K. Eugster

SKE:cal

Copies to
Court Department 1, Judge Robert D. Austin
Court Department 2, Judge Neal Q. Rielly
Court Department 3 Judge Tari S. Eitzen
Court Department 5 Judge Michael P. Price
Court Department 6 Judge Salvatore F. Cozza
Court Department 7 Judge Maryann C. Moreno
Court Department 8 Judge Harold D. Clarke III
Court Department 9 Judge Jerome J. Leveque
Court Department 10 Judge Linda G. Tompkins
Court Department 11 Judge Gregory D. Sypolt
Court Department 12 Judge Ellen Kalama Clark

(A copy has not been sent to Judge Kathleen O'Connor because her department of the court has been assigned a case concerning the River Park Square Parking Garage.)

APPENDIX

RCW 10.27.030 Summoning grand jury

No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause. [Emphasis added.]

9A.32.070. Manslaughter in the second degree

- (1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he causes the death of another person.
- (2) Manslaughter in the second degree is a class B felony.

RCW 9A.08.010. General requirements of culpability

- (1) Kinds of Culpability Defined.
 - (a) INTENT. A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.
 - (b) KNOWLEDGE. A person knows or acts knowingly or with knowledge when:
 - (I) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
 - (ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.
 - (c) RECKLESSNESS. A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.
 - (d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts with criminal negligence when he fails to be aware of a

substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation. [Emphasis added.]

(2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

EUGSTER LAW OFFICE

A Professional Services Corporation
423 WEST FIRST AVENUE, SUITE 100
MINNESOTA - OAKLEY BUILDINGS
SPOKANE, WASHINGTON 99201

TEL. (509) 624-5566
FAX (509) 838-4274
www.eugsterlaw.com

Stephen K. Eugster
eugster@eugsterlaw.com

Cynthia Lawson, Paralegal
clawson@eugsterlaw.com

June 8, 2006

Steven J. Tucker
Spokane County Prosecuting Attorney
1100 W. Mallon Avenue
Public Safety Building
Spokane, WA 99260-2043

Hon. Ellen Kalama Clark
Presiding Judge
1116 W. Broadway
Spokane, WA 99260

**Re: River Park Square Parking Garage – Grand Jury –
Death of Jo Savage April 8, 2006**

Dear Judge Clark and Mr. Tucker:

Attached you will find a story published in THE SPOKESMAN - REVIEW by Jonathan Brunt entitled "*Report cited 'problem' with RPS Walls*" on Wednesday, June 7, 2006.

Also attached you will find the July 1993 report by Atwood - Hinzman, Inc. and Richard Atwood which was in large part the basis for the story and the headline, and you will find attached a July 21, 1993 letter to Mr. Atwood and his firm from Scott L. Walters of Budinger & Associates. The latter preceded the Atwood Report.

The article and the Atwood Report show that despite the "engineering analysis" of the panels in the River Park Square Garage several "barrier" panels had failed before Mr. Atwood's report in 1993.

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Mr. Brunt reports that “[a] 1990 study found that 45 barriers in the garage were cracked . . . the garage had 20 barriers constructed to replace 18 that were beyond repair.”

Previously, I provided detailed information about the River Park Square Parking Garage and the death of Jo Ellen Savage. Information which seemed to cause a reasonable mind concerns lest there be criminal wrongdoing or liability in the death of Mrs. Savage.

Now we know more:

1. It is now known that many RPS barrier panels had broken before 1990.
2. We know that even though the panels may meet a 6000-pound impact load, the panels failed in the past prior to 1993 and continued to fail.
3. We know that issues about the location of the rebar in the panels had arisen as early as 1993 as shown in the Atwood Report.
4. We know there was a panel failure in 1991.
5. We know there was a panel failure in circa August – September 1999.
6. We know that Jo Ellen Savage died because of a panel failure on April 8, 2006.
7. It is beyond any doubt, the owners of River Park Square knew the clear danger that RPS barrier panels would not prevent a car from falling off a parking deck of the parking garage.

It may also well be that City of Spokane officials knew of these matters. After all, the city became the owner of the garage for a time and was involved in rebuilding the garage in 1998 - 1999 so the garage could be leased and eventually owned by the city.

What we know shows, beyond any doubt, there may be culpable criminal conduct, perhaps in the form of criminal negligence, regarding the death of Jo Ellen Savage.

What we know and the serious concerns attendant to the facts and what we know are grounds for the impanelment of the grand jury to investigate the possibility of criminal conduct

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in the death of Jo Ellen Savage.¹

Again, I urge you to impanel and grand jury.

Very truly yours,

EUGSTER LAW OFFICE PSC

Stephen K. Eugster

SKE:ske

Enclosures:

1. J. Brunt, *Report cited "Problem" with RPS Walls: Judge dismisses action seeking to declare garage a public nuisance*, THE SPOKESMAN - REVIEW, June 7, 2006.

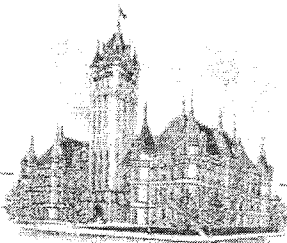
2. R. Atwood, Atwood-Hinzman, Inc., *River Park Square Parking Structure Precast Concrete Panels (circa July 1993)*.

3. S. Walters, Budinger & Associates, *River Park Square Parking Garage: Pre-cast Concrete Wall Panels*, July 21, 1993

Copies to: Superior Court Judges (sans Judge O'Connor)

¹ Since, Judge Kathleen M. O'Connor has been involved in legal proceedings regarding the River Park Square Garage a copy of this letter is not being sent to her. She should also not be involved in an decision making of the Superior Court regarding whether or not to impanel a grand jury.

S P O K A N E



C O U N T Y

STEVEN J. TUCKER
PROSECUTING ATTORNEY

OFFICE OF PROSECUTING ATTORNEY

MAIL TO:
Civil Division
1115 W. Broadway Avenue
Spokane, WA 99260-0270
(509) 477-5764 FAX: 477-3672

June 13, 2006

RECEIVED

JUN 14 2006

EUGSTER LAW OFFICES, P.S.C.

BY _____

Mr. Stephen K. Eugster
Attorney At Law
100 Minnesota Building
423 West First Avenue
Spokane, Washington 99201

Re: Letters dated May 12, 2006 and June 8, 2006, with Regard to the River Park Square Parking Garage – Grand Jury Request

Dear Mr. Eugster:

This correspondence is in response to the above-referenced letters. In those letters, referencing the Criminal Investigatory Act of 1971, you have asked that I initiate the summoning of a Grand Jury "... to inquire into and investigate the death of Jo Savage at the River Park Square Parking Garage on April 8, 2006."

RCW 10.27.030 sets forth the circumstances under which the Prosecuting Attorney may initiate a request for a Grand Jury. It provides as follows:

RCW 10.27.030 Summoning grand jury.

No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause.

The provisions of RCW 10.27.030 do not create a legal duty on the part of a prosecuting attorney to initiate the summoning of a Grand Jury.

Criminal Department
1100 W. Mallon Avenue
Spokane, WA 99260-0270
(509) 477-3662 FAX: 477-3409

Civil Department
1115 W. Broadway
Spokane, WA 99260-0270
(509) 477-5764 FAX: 477-3672

Domestic Violence Unit
901 N Monroe, Suite 200
Spokane, WA 99201
(509) 835-4500 FAX: 835-4552

Drug/Property Department
721 N. Jefferson
Spokane, WA 99260-0270
(509) 477-6416 FAX: 477-6450

Juvenile Department
1208 W. Mallon Avenue
Spokane, WA 99260-0270
(509) 477-6046 FAX: 477-6444

Stephen K. Eugster

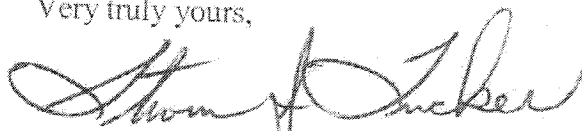
June 13, 2006

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Prosecuting attorneys in the State of Washington use the indictment process to initiate criminal charges. The indictment process is in general started by a complaint being filed with a law enforcement agency to investigate allegations of criminal wrongdoing. Law enforcement agencies possess unique expertise to determine whether or not an investigation is warranted.

I recommend that you forward your letters of May 12, 2006 and June 8, 2006, to the appropriate law enforcement agency for review.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Steven J. Tucker".

STEVEN J. TUCKER

Spokane County Prosecuting Attorney

SJT:jtb

- John - Setton

- Inlu Roloff - lawyer

- 425-445-7582

Inlu Roloff. not med. com.

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