

conduct by alleging the huge case load that he was carrying at that time and alleging that this discovery failure had caused no material harm since the trial itself was held more than one year later. That affidavit ignores the fact that as a result of the Respondent's conduct the State lost the use of a witness who would have testified that the defendant did remember the accident (contrary to his prior assertions) and had admitted his negligence. The defendant was eventually acquitted at trial possibly in part, because the State was prohibited, as a sanction for Humphrey's conduct, from using that evidence. As a further result of Humphrey's conduct in Count Three he was removed as the prosecuting attorney by his superior, the Dane County District Attorney. Humphrey's assertion in paragraph 78 that the notes were "not discoverable" is not worthy of further discussion.

I therefore find that by failing to turn over to the defense until January 7, 2004, an October 21, 2003, witness statement concerning incriminating declarations that the defendant allegedly made to Witness McCoy following the accident, despite having been served on March 12, 2002, with a valid defense discovery request for "a written summary of all oral statements of the defendant which the State plans to use in the course of the trial and the names of witnesses to the defendant's oral statements," **Humphrey did, in pretrial procedure, fail to make a reasonably diligent effort to comply with a legally proper discovery request by opposing party, in violation of SCR 20:3.4(d).**

COUNT ONE

"He that holds his peace seems to give his consent." (SIR THOMAS MORE 1534)

The vital evidence in the underlying criminal case related to photographs of tire marks left at the accident scene prior to the defendant's car leaving the road and rolling over. Apparently accident reconstruction experts for both sides used those tire marks to