

September 29, 2003

Governor James Doyle
Executive Office
115 East State Capitol
Madison, WI 53701

Chief Justice Shirley Abrahamson
Wisconsin Supreme Court
16 East State Capitol
Madison, WI 53701

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OFFICE OF
LAWYER REGULATION

RE: State v. Adam Raisbeck
Dane County Case No. 01 CF 2708

Dear Governor Doyle and Chief Justice Abrahamson,

Recently Dane County Circuit Court Judge Paul Higginbotham was appointed to the Court of Appeals. After the appointment, Judge Higginbotham apparently sought and obtained an order allowing him to continue on the above-captioned case in order to rule on a number of pending matters. Pursuant to this, on September 19, 2003 he filed a memorandum and order.

I tremble at what I find myself faced with at this juncture. I have nine children and my wife and I expect a tenth next spring. I do not lightly put myself in a situation where, for all practical purposes, my means of supporting my family may be seriously jeopardized. But on the other hand, what has occurred in the above-captioned case is such an outrage of justice and common decency that my responsibility as the attorney for Adam Raisbeck and as a citizen compels me to act.

Next month Adam Raisbeck is set to go to trial on a charge of vehicle homicide for an accident which occurred roughly two years ago when Adam was seventeen. At the preliminary hearing it was testified that, given the circumstances of the accident, death would have resulted if the speed of the vehicle was only one to two miles per hour. There never has been any claim that Adam was driving impaired at the time of the accident. There never has been any claim by any eyewitness, including the surviving passenger, that Adam on that night drove in a reckless and dangerous fashion.

If the above is not troubling enough, Adam was bound over to stand trial solely on the basis of alleged expert testimony. However, the professional opinion which the expert at the preliminary hearing testified to holding to a 'reasonable degree of scientific certainty' has for all practical purposes been declared null and void, and at trial he will not be testifying due to his 'flawed methodology.' The state has justified its withheld from the defense for nearly eight months the fact that this expert had reversed his sworn testimony by claiming that this reversal is 'inculpatory' and that his previous sworn testimony was merely an 'assumption!'

If the above isn't troubling enough, during the time that ADA Humphrey kept hidden the fact that the expert had reversed his position and sworn testimony, he pushed to have the case go to trial and falsely represented to the court that all possible exculpatory evidence had been disclosed to the defense.

If the above isn't troubling enough, a hearing was held on August 22, 2002 to ascertain why particular photographic evidence had not been preserved. Due to a failure to comply for the second time with a defense subpoena for the entire photographic evidence, the defense sought that the hearing be adjourned until compliance occurred. Judge Higginbotham, after scolding the defense counsel for his 'paranoia' and 'conspiracy-minded' thinking, ordered that the hearing proceed with two photographs provided by ADA Humphrey. A deputy sheriff testified that these two photographs were the only photographs that captured the tire marks at the scene of the accident. At the conclusion of the hearing, the court acknowledged its concern that the sought photographic evidence had not been preserved, but concluded that there was no 'bad faith' on the part of the state.

Roughly three weeks later and shortly prior to the then-scheduled trial date that ADA Humphrey was pushing, it was unexpectedly discovered by the defense that in fact a third photo actually captured the particular photographic evidence sought at the August 22, 2002 hearing. It was further discovered that this most exculpatory piece of evidence was in possession of ADA Humphrey on August 22, 2002.

If the above isn't troubling enough, prior to the defense's discovery of the aforementioned photographic evidence, ADA Humphrey on August 23, 2002 provided a written summary of a second expert, Mr. Robert Krenz, where he claimed that Mr. Krenz's opinion was consistent with the sworn testimony of the first expert in regards to the tire marks. However, it has since been revealed that this summary was absolutely false and in fact Mr. Krenz's actual opinion (as he has acknowledged under oath) based upon the aforementioned photographic evidence is diametrically opposed to ADA Humphrey's representation.

If the above isn't troubling enough, also in regards to Mr. Krenz, ADA Humphrey represented to the court that he was unaware of whether Mr. Krenz had made a determination about the tire marks (which was the basis for bind-over at the preliminary hearing). ADA Humphrey further represented that Mr. Krenz's speed calculation was not dependent upon Mr. Krenz ascertaining whether or not the tire marks were brake marks. However, it has since been revealed that ADA Humphrey's representations were absolutely false, and in fact Mr. Krenz under oath has conceded such and likewise has conceded to having passed on his actual opinions directly to ADA Humphrey.

If the above isn't troubling enough, on two separate occasions (May 22, 2002 and September 20, 2002) ADA Humphrey moved the court to preclude the defense from having the

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opportunity of presenting an expert witness at trial. Both motions, one of which contained a sworn affidavit by ADA Humphrey himself, alleged that the defense was improperly withholding information. Both motions have been found by the court to have been based on factual misrepresentations. And the court on the record stated that the sworn affidavit contained a 'fabrication' to support a 'disingenuous' claim by ADA Humphrey that the defense was seeking to conduct 'trial by ambush.'

If the above isn't troubling enough, as of this date ADA Humphrey has suffered absolutely no consequences for his actions. This is even despite there being substantial evidence that on at least two occasions he clearly violated criminal statues.

If the above isn't troubling enough, the court's memorandum and order characterized ADA Humphrey in the case at hand of "stretching the truth to almost beyond recognition," of "play(ing) very fast and loose, if not reckless with true facts," of on a number of times, "disregard(ing) the accuracy of his statements," of "repeatedly and recklessly represent(ing) as facts things that upon reflection and review are not what he claims." And all of this has been characterized as being Humphrey's "style of lawyering."

If the above isn't troubling enough, having made all of the aforementioned statements, Judge Higginbotham found no misconduct on the part of ADA Humphrey. But, when so concluding, Judge Higginbotham unfortunately made a number of factual misrepresentations/ omissions that rival anything that ADA Humphrey has done in the case at hand. While I realize that this is a serious statement on my part, it is one that can be easily substantiated. Attached is my letter to Judge Higginbotham in this regard which details ten instances where his memorandum and order did not accurately reflect the actual record.

One crucial example is that Judge Higginbotham's memorandum and order declared that he had 'never made a specific finding' that ADA Humphrey had fabricated in his affidavit and in his arguments to the court in support of the affidavit's accuracy. This factual assertion by Judge Higginbotham is categorically untrue. Immediately attached to this letter are pages 7-9 and 13 of the April 7, 2003 transcript which show beyond any dispute that Judge Higginbotham indeed, contrary to his factual assertion in his memorandum and order, did in fact make the specific findings he now claims otherwise.

If the above isn't troubling enough, it should be pointed out that as Judge Higginbotham was aware, ADA Humphrey's 'style of lawyering' has lead him to be accused of similar conduct in at least three relatively recent cases by other local defense attorneys, including another one in front Judge Higginbotham. As of this date, no court will address his systematic misconduct. Further, in the case at hand, ADA Humphrey's misconduct has been brought to the attention of Dane County DA Brian Blanchard and Deputy Assistant DA Judy Schwaemle. Not only have neither of these individuals reigned in ADA Humphrey, as shown by the record

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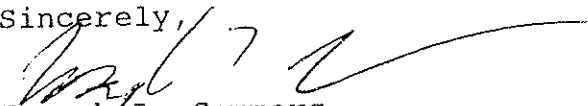
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in this case, they have both actively assisted in covering up and in some instances even furthering his factual misrepresentations.

One would think that the recent publicized revelation that a man in Wisconsin was wrongly convicted and lost eighteen years of his life would heighten the sensibilities of responsible individuals to guard against similar injustices occurring. One would think there would be some awareness in Wisconsin of the fact that vehicle homicides, especially when there is no allegation of the driver being impaired, are particularly susceptible to prosecutorial abuse in that these cases revolve almost entirely upon expert opinions, and therefore, for a defendant to have his day in court he has to be able to have the means to utilize paid experts. For Adam Raisbeck and other defendants in similar situations to even present a defense at trial, their families are forced to face serious financial difficulty, if not financial ruin. There has to be something in place to protect little people from being coerced into guilty pleas to avoid the alternative of going to trial with a hand tied behind their back.

I do not know the proper course of action at this juncture. In that there is substantial evidence that DA Brian Blanchard has not dealt responsibly with the easily substantiated misconduct of ADA Humphrey, I believe that the Governor at this juncture can act to correct the situation, pursuant to §17.06(3) and §17.11(1) of the Wisconsin statutes. Further, I believe that it would be proper for the Chief Justice or any justice aware of the situation, on their own motion to move, pursuant to §978.045, Stats. that a special prosecutor be appointed in regards to ADA Humphrey's misconduct. I also believe as I put forth in my submission to Judge Higginbotham that a new order should be entered to allow Judge Higginbotham the opportunity to correct his findings and analysis in light of what is the actual record in the case at hand. I believe that justice and judicial responsibility demand no less.

Sincerely,


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Hon. Michael Nowakowski
Judy Coleman, Dane County Clerk of Circuit Court
Cornelia Clark, Supreme Court Clerk
ADA Paul Humphrey
DA Brian Blanchard
Adam Raisbeck

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