Wisconsin Court Corruption

It's Too Scary - Appendix

me?" and Justice Prosser said, "Yes, . . .you are a bitch" and added, "There will be a war against you and it will not be a ground war". Justice Crooks and Bradley had concerns for the Chief Justice after this, and therefore went to speak with Voelker and Brady. Justice Crooks said both his law clerk and assistants had told him they felt they were working in "a hostile work environment."

Justice Crooks said he has never tried to calm Justice Prosser down when he becomes irate, and the person that has been the most effective in calming him down has been Justice Bradley over the years. Justice Crooks said Justice Bradley sits next to Justice Prosser during their meetings. Justice Crooks states he feels that if he ever tried to calm Justice Prosser down, it would be like "fueling the fire."

After the February 2010 incident, Justice Crooks said the chief justice had a friend, who is either a psychiatrist or psychologist; evaluate Justice Prosser's behavior. Justice Crooks said the behavior was evaluated only by what the Chief Justice told the psychiatrist at the time. The psychiatrist had not talked to anybody about Justice Prosser's behavior, including Justice Prosser. Justice Crooks said the psychiatrist believed that it would be highly unlikely Justice Prosser's behavior would escalate to any sort of violence. Justice Crooks said that it was clear, based on the June 13, 2011 incident, that the psychiatrist was wrong.

Justice Crooks also said that he believes there are a lot of people in their office that are fearful of losing their jobs if they speak out about this incident or any other incident. Justice Crooks also said Margaret Brady had told them she could not do anything because they are elected officials.

I asked Justice Crooks if he feared for his own safety at any point and he stated he did not. Justice Crooks did say that, although he does not fear for his safety, he does feel intimidated by Justice Prosser. Justice Crooks said he feels that he has to "walk on eggshells" because he does "not want to trigger an explosion or set him off." Justice Crooks said he has to watch what he says to Justice Prosser at all times. Justice Crooks also has noticed when the Chief Justice is out in public giving any type of speech, and Justice Prosser is present, he has noticed the Chief Justice will always turn to Justice Prosser and ask him if he has anything he would like to add or say at that time. Justice Crooks said the Chief Justice does not ask any of the other justices if they have anything to say, only Justice Prosser. Justice Crooks believes this is the Chief Justice's way of appeasing Justice Prosser while they are out in public.

Justice Crooks also talked about a public hearing in the fall of 2009 in which the justices were listening to a case regarding campaign money. Justice Crooks said someone was lobbying in regards to the campaign money and during this time, Justice Prosser "displayed anger and showed accusations". Justice Crooks said that was an example he could recall in which Justice Prosser had showed a temper tantrum in a public meeting.

Justice Crooks said he would be fine if the result of this investigation resulted in Justice Prosser receiving counseling or treatment for his behavior. Justice Crooks believes Justice Prosser needs more than just anger management counseling.

Justice Crooks also told us that he has witnessed Justice Prosser say that the judges in Dane County and police in Dane County are corrupt. Justice Crooks said he has no idea why Justice Prosser would say this, but added, "It's like he's paranoid or something."

ATTACHMENTS:

Justice Crooks gave us information printed from the Internet, which were newspaper articles that mentioned incidents involving Justice Prosser and his behavior. He also gave us notes he had typed for the Feb. 22, 2010 meeting. A copy of the notes has been attached to this case number. The newspaper clips were not attached because they have already been circulated to the public.

madison.com

Prosser plans to ask other justices to recuse selves in discipline case

DEE J. HALL | Wisconsin State Journal | dhall@madison.com | 608-252-6132 | Posted: Tuesday, March 20, 2012 6:45 am

Embattled Wisconsin Supreme Court Justice David Prosser said Monday he will likely ask other members of the court to recuse themselves from deciding on the disciplinary complaint filed against him last week — an action that, if successful, would appear to kill the case.

Prosser also said in an interview Monday that he favors authorizing the Wisconsin Judicial Commission to release records of its deliberations in the matter to allow him and others to determine whether the commission was — as he charged Friday — politically biased against him.

"As far as I'm concerned, I don't think I have anything to hide here," Prosser said. "I don't know who made the complaints. I don't know what their (commission members') votes were. I don't know if it was a unanimous vote or not a unanimous vote."

Last week the commission alleged Prosser engaged in three counts of misconduct during an altercation June 13 in which he put his hands on the neck of Justice Ann Walsh Bradley in front of four other justices. One member, Patrick Crooks, was not there. State law bars judges from presiding over matters in which they are material witnesses.

Prosser has said it was a "reflex" after Bradley "charged" him during an argument over the court's contentious 4-3 decision upholding Gov. Scott Walker's controversial collective bargaining law.

Bradley declined to discuss the complaint last week, issuing a brief statement saying, "I am saddened by this entire episode. But I have a great deal of respect for the process, and it will now continue."

The next step is for the state Court of Appeals to choose three of its judges to hear the case. That panel then makes its recommendation to the Supreme Court.

Prosser contended that none of the other justices, including Crooks, should sit on the case. He said Crooks could be influenced by his discussions with Bradley, Chief Justice Shirley Abrahamson and detectives from the Dane County Sheriff's Office who investigated the altercation.

A special prosecutor declined to issue criminal charges.

"How can this case be decided?" Prosser asked. "You have six justices who were present at the scene ... . You have justices with actual bias who are eyewitnesses and, in effect, parties."

Prosser also charged that the Judicial Commission's makeup is inherently biased because five of the nine members are appointed by the sitting governor, who is a partisan.

In his case, at least some of those who participated in discussion about the ethics charges against Prosser, a former Republican speaker of the Assembly, were appointees of former Democratic Gov. Jim Doyle.

Earlier this month, GOP Gov. Scott Walker appointed three new members for a total of five appointees, but the most recent crop did not participate in any of the discussion about the incident and has not yet attended any meetings.

The commission's executive director, James Alexander, declined to say which members participated in the decision or decisions to seek discipline against Prosser or how they voted. He cited a state law that requires the body to keep secret any actions it takes before issuing a formal complaint.

However, Alexander confirmed that all four members appointed by the Supreme Court — two judges and two attorneys — attended all six of the commission's meetings since June and that throughout that time, the body has had either one or two vacancies.

Under the law, confidentiality can only be waived in writing by the judge facing discipline. Prosser said he will confer with his attorneys, Keven Reak and Gregg Gunta of Wauwatosa, to decide whether to ask the commission to open up its records. He said he testified before seven of the nine commission members on Sept. 23 for three hours, and for another hour in front of six members on Dec. 16, but was not present for any votes.

"The truth of the matter was, they were not interested in what my defense was or any provocation for my action," Prosser said. "They were only interested in my conduct."

Joseph Sommers

From: Dane County For Justice <danecountyforjustice2@gmail.com>
Sent: Monday, March 26, 2012 8:05 PM
To: sommerslawoffice@msn.com
Subject: Fwd: Dane County Corruption Detailed on Matters as Serious as Homicide

---------- Forwarded message ----------
From: **Dee J. Hall** <dhall@wisconsinwatch.org>
Date: Mon, Mar 26, 2012 at 11:27 AM
Subject: Re: Dane County Corruption Detailed on Matters as Serious as Homicide
To: Dane County For Justice <danecountyforjustice2@gmail.com>

Joe:

You have multiple references to attached documents but I don't see any of them here. Do you plan to send those along as well?

-- Dee

P.S. - I am not aware of Justice Crooks saying that Justice Prosser claims the Dane County police and judges are corrupt. Do you mind sharing that with me as well?

On Mon, Mar 26, 2012 at 7:45 AM, Dane County For Justice <danecountyforjustice2@gmail.com> wrote:

Justice Crooks says that Justice Prosser claims that the Dane County police and judges are corrupt. Justice Prosser should have added the Dane County DA's Office.

Attached is a detailed and readable outline on the police, prosecutorial and judicial corruption in Dane County on matters resulting in the most dangerous criminals being protected, and even involving homicide.

--
Dee J. Hall
Wisconsin Center for Investigative Journalism
5006 Vilas Communication Hall
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document. A question still remains. What happened on the cases where she never even wrote a report? When asked for example:

Q: Did you always document in your reports when you did a consent search?
A: No
Q: Is there a reason why you didn't routinely document that?
A: No, only that we do so many of them that I, I mean, it would be a lot of reports.

This response alone, demonstrates Markham's willful neglect of a policy that speaks to one of the core values of the department which holds us responsible for what we do and how we do it. That is, we do not stop or search without articulating why, how or when. This type of attitude is just one example of how Markham's conduct undermined the trust of the public during the performance of her duties. This is the public we have been hired to protect and serve.

Preliminary Findings

2-219	**Unlawful Conduct**	**Wis. Stat 946.12(3)**	**Exonerated**
2-219	**Unlawful Conduct**	**Wis. Stat 946.12 (3)**	**Exonerated**
2-219	**Unlawful Conduct**	**Wis. Stat 946.76**	**Not Sustained**
2-219	**Unlawful Conduct**	**Wis. Stat 946.12(3)**	**Exonerated**
2-219	**Unlawful Conduct**	**Wis. Stat 946.12(3)**	**Not Sustained**
2-219	**Unlawful Conduct**	**Wis. Stat 946.12(2)**	**Exonerated**
2-219	**Unlawful Conduct**	**Wis. Stat 946.12(2)**	**Exonerated**

See Attached Spreadsheet for:

2-201	Performance of Duties	Sustained (7 counts)
2-203	Equal Protection	Sustained (1 count)
2-204	Overbearing, Oppressive, or Tyrannical Conduct	Sustained (3 counts)
2-207	Flagrant Law Violations	Sustained (3 counts)
2-210	Submission of Reports	Sustained (62 counts)
2-223	Transportation and Treatment of Prisoners	Sustained (2 counts)
2-244	Seizure of Private Property	Sustained (15 counts)
2-245	**Property Handling**	**Sustained (59 counts)**
2-257	**Search and Seizure**	**Sustained (3 counts)**
7-100	**Arrest, Incarceration and Bail – Adults**	**Sustained (3 counts)**
7-200	**Investigations, Arrest, Search – Juveniles**	**Sustained (2 counts)**
7-300	**Stop & Frisk**	**Sustained (2 counts)**
7-400	**Searches/Seizures**	**Sustained (7 counts)**
7-500	**Property Handling**	**Sustained (2 counts)**
10-100	**Police Canine Use**	**Sustained (1 count)**
10-200	**Interpreters**	**Sustained (1 count)**
10-300	**Confidential Sources of Information**	**Sustained (1 count)**
12-100	**In-Car Data Capture System**	**Sustained (1 count)**
12-600	**Recording Suspect Interviews**	**Sustained (2 counts)**

Total Sustained 177

Lieutenant of Police
Professional Standards and Internal Affairs

#4

and assumptions. He did not have names, addresses, dates or other details. What was clear and consistent was that [redacted] and all Task Force personnel agreed that [redacted] was difficult to catch. There were no internal allegations or documented information to support [redacted]'s claims. As a result there is no evidence to support or prove that Markham was involved in tipping [redacted] about police operations.

[redacted] CASE

The [redacted] case surfaced during this investigation from interviews with former Task Force employees and supervisors. Task Force personnel advised that they had heard allegations from [redacted] (name given to protect his identity) that Markham was "dirty" and had "ripped off" several thousands of dollars from him. [redacted]'s case began back in [redacted] of 2006 and ultimately revealed a complex case which provided a great deal of information as to how Markham performed her duties within the Task Force, particularly when dealing with informants and other unit members. The specific allegations were determined to be that Markham "ripped" [redacted] and his family of money through illegal searches and coercive tactics.

[redacted] and [redacted] Agent [redacted] were interviewed and explained that [redacted] started as a ci for Markham. However, [redacted] became Det [redacted]'s and Agent [redacted]'s ci because [redacted] refused to work with Markham due to his allegations that she was "dirty". [redacted] stated that he and [redacted] then excluded Markham from the investigation and he and [redacted] continued to work with [redacted].

In order to work with [redacted], [redacted] facilitated a book and release from the jail in conjunction with the DA's office after [redacted] had been arrested. [redacted] later heard that Markham ended up at the jail around the same time that [redacted] was arrested and was angry that [redacted] was being released. [redacted] heard that there was some sort of commotion at the jail and that Markham wanted to be the one to be working [redacted]. Markham allegedly told [redacted] that if he got out, she would tell everyone he was a snitch. The commotion at the jail was later substantiated by another detective through deputies that had reported that Markham had strong reactions at the jail. A few hours later, [redacted] reported that Markham called him at home and was yelling at him on the phone, angry because [redacted] was working with [redacted] and not her. [redacted] told her he couldn't talk to her as he had company at his home. Ultimately, [redacted] met with [redacted] and [redacted] and a large scale operation took place resulting in [redacted] drug seizures in Task Force history.

Interview with [redacted]

Agent Neuguth and I interviewed [redacted] at an undisclosed location. He said he was stopped by Markham and was arrested and released. (Markham found approximately an ounce of cocaine and wrote a report outlining this arrest and seizure). After Markham arrested [redacted], she told [redacted] not to worry and whatever happened would be between the two of them. He said he was eventually released but Markham told him that if he didn't follow through with her he would spend the rest of his life in jail and that he would not live in peace and she would tell all of his friends. After being released, [redacted] said he did call Markham a few times and that Markham stopped a few times at his home but he wasn't there. After that, [redacted] stated Markham started calling and harassing him.

[redacted] said at a later date, Markham came to his home when he was at work and searched his home again going through his drawers and took $4000. He said that [redacted]

(name given to protect [redacted] identity) called him at work and told him Markham came in, went through his drawers and took all the money. He told us that Markham was probably mad at him for not returning her phone calls and so just went barging in.

[redacted] said then next time he was arrested was by a deputy [redacted]. They took him to the DCJ and the officers talked to the DA and had [redacted] sign several papers so that he could be released. He said he had [redacted] they were more professional and not "berserk" like Markham. While [redacted] was in the holding area with his release being processed, he said Markham showed up at the intake area where there were several other prisoners. Markham asked one of the deputies what was going on with [redacted] and the deputy told her he was being released. He said that Markham "put up a fit" and the deputy asked her if she wanted to see the paperwork. She was shown the paperwork and he said she became angry. In front of the other arrested people she accused him of playing dirty and was saying things that he felt were trying to get him in trouble and make him look like a snitch in front of the others. She told [redacted] that he better not do the same thing to the other officers as he did to her. After his release, [redacted] that Markham was a "dirty" cop.

[redacted] Interview

[redacted] told us that approximately 2 ½ to 3 years ago [redacted] was pulled over by Markham near [redacted] home (a police report by Markham confirmed [redacted]-06). Markham asked [redacted] a lot of questions about [redacted]. Markham asked for [redacted] mom and dad's phone number, which [redacted] gave to her. During the course of the stop, Markham told [redacted] that they should go back to [redacted]'s home to talk further. Once at her home, another unknown w/m officer met them in the driveway. Markham went into the house with [redacted] and told the uniform officer to look for [redacted] upstairs. [redacted] didn't know why they were looking for [redacted] and she stated no one asked for [redacted] permission to look around the apartment for [redacted].

[redacted] basically said that the search was without [redacted] permission and [redacted] felt pressured when Markham arrived at the house and searched. [redacted] said there was approx. $600 in [redacted] night stand drawer (the night stand on the right side of the bed). Markham told [redacted] that she had to take the money saying it might be drug money. [redacted] said it was [redacted] personal money from [redacted] job and that [redacted] told this to Markham. [redacted] said the nightstand [redacted] and that Markham also went into that drawer however does not believe she took anything out of that drawer or from anywhere else in the home. We asked if Markham ever asked [redacted] directly if she could search or look around [redacted] stated she never did so. [redacted] said Markham told [redacted] that she had been watching the house.

[redacted] said [redacted] never heard from Markham again. Sometime later, [redacted]'s mother received MPD paperwork with some sort of court notice that said [redacted] could come and pick up the $600 that Markham had taken out of her house. [redacted] stated [redacted] had already moved to another state and did not make the trip back to pick it up. [redacted] also stated that some time after Markham had talked to [redacted], Markham also called [redacted]'s mother and told her that [redacted] was a drug dealer and that he had other [redacted]. [redacted] appeared to be most upset about this stating that [redacted] was not a minor and Markham had no right to call [redacted] mother.

Markham Interview on the [redacted] Case

Markham was able to recall much of the [redacted] case. The allegation of Markham "ripping" money from [redacted] was not found to be true according to statements made by [redacted] and [redacted]. The

#5-b

A: No, other than I, I think Mr. [redacted] was frustrated that I was trying to hold him accountable and I dogged him and I called and I sat in his house and I just think he didn't like that and I think that's, I understand where he was coming from but I think he also needed to understand that he had made a promise and I was trying to hold him accountable.

[redacted] Conclusion **Unlawful Conduct : Exonerated**

I concluded after speaking with [redacted] and [redacted] that [redacted]'s initial claim back in 2006 that Markham was "dirty" and that Markham had taken his money proved to be angry retorts by [redacted] and [redacted] rather than criminal or unlawful behavior by Markham. This investigation concluded there was no evidence that money was taken illegally from [redacted] or [redacted], or that Markham violated any policies during the money seizures. The investigation also revealed that Markham was relentless in pursuing [redacted] to become her informant and she attempted to go through [redacted] to get to [redacted]. Several detectives indicated there were numerous problems with Markham involving this investigation. Markham made it clear that she felt she was entitled to be a part of this investigation and that detectives did not include her. While there were no sustained policy violations, this was a case brought up by several different Task Force members to illustrate how Markham overstepped her role as a uniformed officer. This is particularly problematic given Markham's acknowledgement in the context of the [redacted] Case where Markham stated, "…it was kind of known in the unit if somebody's a target…You don't really interfere…" Again, the behavior speaks to Markham's judgment related to her performance of duties.

[redacted] CASE

Sgt. [redacted] worked in DCNAG from [redacted] to [redacted]. [redacted] was one of the Sergeants who supervised Markham. [redacted] reported he had "nagging questions" about possible tip offs to some of the Task Force operations. His biggest concern was the [redacted] case where his team had conducted surveillance for 2 weeks every morning in preparation for a [redacted] search warrant in the [redacted]. On the date of the warrant, [redacted] stated that [redacted] got a phone call 15 minutes before the door was breached and [redacted] left. [redacted] was not arrested on the date of the search warrant and it was days until he was actually picked up. The case detective was [redacted] and [redacted] believed it may have been Markham's informant that was involved with getting the original investigation going. Although [redacted] believed someone tipped [redacted], he did not want to believe it was Markham but there were "definite question marks about Markham on this one." He stated he wondered if somehow Markham may have inadvertently tipped someone off. Markham was on all the drug buys and knew of the warrant; however was not working on the day of the execution of the warrant.

[redacted]'s assumption on the allegation about the [redacted] case was that Markham may have inadvertently given her ci or someone else too much information. When asked what other motivation Markham would have to tip someone off, [redacted] stated that he did not want to think that she did this on purpose. He stated he would rather believe that she may have wanted to be in charge of running this case or other bigger cases and this would not be surprising to him. He said "I'm not saying that's right, but I'm just having a hard time with this. With [redacted], something was very wrong here. This was not [redacted]'s normal pattern." [redacted] kept wondering if Markham gave her ci too much info. [redacted] held the same belief as Sgt [redacted] that this case had been compromised. [redacted] was concerned an officer was on the inside leaking information and named Markham as the possible leak. He was unable to

provide specific information as to why he believed Markham was responsible for the leak but felt strongly that it was imperative to investigate this case further.

[redacted]
Agent Neuguth and I interviewed [redacted] in [redacted]. We asked him specifically who had tipped him off the day the search warrant was executed at his apartment. [redacted] denied any tip off and stated that it was just a coincidence that he was out and running the morning of the warrant. He stated he was a jogger and that he ran 15 minutes out and 15 minutes back and that the day of the search warrant he decided to run a little further. He told us he saw police coming as he was leaving for his run. We tried several different ways to convince him to tell us about a tip off however he continually denied there was any. We did not mention Markham's name or even suggest that it was an officer who may have tipped him.

As we said goodbye and thank you, we started to walk away. [redacted], unsolicited, asked "How's Denise?" After gaining my composure, I told him she was fine and asked how he knew her. He told us that she had stopped him and that he had only met her once, which was on a traffic stop. He said he had a few grams of weed and that she let him go without any charges or tickets. He stated Markham gave him her number and told him to give her a call. [redacted] stated he never called her back nor did they ever have any other contact after that. He indicated the stop took place a few weeks before the warrant and that it was on [redacted]. I was able to confirm through new world that Markham did in fact conduct a traffic stop and seize a small amount of marijuana which was placed in the MPD property room near the time and place described by [redacted]. See case #08[redacted].

Markham's Interview Statements

Markham was interviewed under Garrity on December 8, 2009. Markham remembered the traffic stop involving [redacted] 2008 approximately one month or so prior to the warrant. She was given a copy of her police report #2008[redacted] for review. Markham stated that she did not recognize [redacted] until after the stop was made and contact was made. She was not sure if she knew there was an ongoing investigation but did say "Yah, I think maybe I did 'cause I think I told [redacted] that I had pulled him over or had, I think I have (sic) him the plate number and wanted to make sure he knew about that car." The report showed that it was special routed to CIS and Task Force.

Markham was informed that [redacted] was interviewed [redacted] and that he had asked about her and how shocking that was to Agent Neuguth and me. She responded "Yah. And I, I would be surprised if I was you too, that he would say that…Uhm, I know pretty much most of his family. I've been chasing them for a long time…Regardless you've been around long enough to know my reputation. I am the most talked about officer in the City. I'm not trying to say that in a bragging kind of way but these guys do talk about me…Why he would bring that up I don't know. I assure you I didn't tip him off. I didn't tip his girlfriend off."

[redacted] **Unlawful Conduct : Not Sustained**

The allegation of Markham tipping off [redacted] remains one of the most troubling cases. [redacted] was clearly tipped off when he went jogging minutes before the warrant (when he was not a jogger, proven by days of pre-surveillance and from statements made by a lifelong friend). [redacted]'s, unsolicited statement of "how's Denise" as investigators were exiting [redacted] interview with him was highly suspect. Markham herself agreed that this was an issue.

more of a middler or smaller level person…And so generally no, I wouldn't say you didn't, do say that but I think there have been occasions where we have.

Q: Would it have been more proper to go to [redacted] and say hey, [redacted]. Called, rather than telling her or having a conversation about buys into her since she's (sic: he's) the lead detective on it, for him to deal with her on it and not confirm or deny whether buys are into someone?

A: Yes, I would say that would be typically the better way to handle it and I do remember a couple of conversations with him about her so I know I did talk to him about it but generally I think as a uniformed officer, I mean, usually you should try to let the detectives to deal with their cases.

[redacted] Conclusion **Unlawful Conduct : Not Sustained**

There is no probable cause to believe that Markham committed a crime or intentionally compromised [redacted]'s drug case with [redacted] to benefit the suspect. Again, this allegation is closely related to Markham's interference in Detectives' investigations for whatever self serving purposes and/or lack of boundary issues. Markham was evasive in her answers during the interview on whether she may have told [redacted] about CI buys into [redacted]. Markham's explanation was that [redacted] herself was not a big player in the drug world however, by getting [redacted] to turn over and work for the Task Force, had the possibility of leading to bigger cases. Markham stated she believed this type of "interference" (she did not call it that) was okay on the smaller cases. She stated her only intention was for a bigger case to be made. In this situation, it is reasonable to believe that Markham did reveal police information about an investigation to the suspect, although there is not probable cause to believe she did so with the intent to aid the suspect. This was not her role nor was it consistent with Task Force or police practices. Once again, this case does call into question her judgment as it relates to her performance of duties.

[redacted] Case

Follow up was conducted on the information/complaint from [redacted], friend of [redacted] from the original proffer interview and [redacted] Case. The interview of [redacted] was completely unplanned and neither Agent Neuguth nor I had any knowledge of [redacted] prior to speaking with [redacted].

In general, [redacted] stated that Markham asked for consent to search [redacted]'s apartment on [redacted]-07 as the result of [redacted] and [redacted] recent drug arrest. [redacted] alleged the consent was coerced, and Markham was overbearing ([redacted] stated that Markham spent at least 45 minutes trying to get [redacted] to consent to a search). As a result, [redacted] consented to the search and alleged Markham seized money ($6000) and that she lost her money to Markham because of this coercion. I reviewed Markham's report, and found that the sequence of events in Markham's report is consistent with what [redacted] told me with minor discrepancies in what [redacted] perceived and what Markham wrote. Markham reported handing the money to Sgt. [redacted] and a follow-up report with minimal information authored by Det. [redacted] indicated the money had in fact been processed and sent to [redacted] for forfeiture. I also spoke with Officer [redacted] reference the consent search. Officer [redacted] recalled being dispatched to [redacted]'s residence to assist Markham on a search. He arrived before Markham and [redacted] and upon their arrival stood by while Markham and [redacted] talked for less than five minutes outside of the apartment. I asked [redacted] if it was possible that Markham and [redacted] talked about the consent search for 45 minutes or more. He responded "Oh heck no". After that, [redacted] said he stood by inside the apartment while Markham began her consent search. [redacted] said that Markham and [redacted] walked from room to room together while Markham asked [redacted] questions and [redacted] pointed out

Q: Even for traffic stops or stops?

A: I might have worn it for, on a few occasions and then I just didn't wear it anymore. Uhm, I don't remember any of the other officers or detectives that I worked with in Task Force wearing their microphone. I think I even remember talking to [redacted] about it and I think it was his understanding that because of the nature of what we were doing and dealing with detectives and informants and such that they didn't want all those things recorded.

Q: Did you remember [redacted] ([redacted]) telling you to get your car audio-video fixed?

A: Yeah and I did.

Q: Numerous times.

I also asked Markham about recording in custody interviews. Markham spoke at length about how she used her own personalized recorder for many in-custody interviews. After interviewing with her personalized recorder, she would later set the personalized recorder next to the department issued Dictaphone and transfer the recorded conversation (see items #93 and #115 of the attached spreadsheet for policy violation).

As a result of Markham's interview statements, I spoke with [redacted] who had worked alongside Markham in the Task Force in the same uniform capacity. I asked [redacted] about the use of his in car video along with his collar microphone. He told me he that he was never told to not use his collar mic. In addition, when asked about recording interviews, [redacted] advised he followed the same directives as the rest of patrol; that is to record interviews on his department issued dictaphone, in car video or by using the district station equipment. [redacted]'s information is pertinent to this investigation. His statement speaks to the fact that someone working in a parallel position to Markham had knowledge of proper protocol to follow policies and procedures, related to recording devices and performed his duties accordingly.

Additional Issues Reported

Another case that raised suspicions in the Task Force unit related to compromised investigations stemmed from an arrest made by Markham and [redacted] at the South Transfer Pt. on Park St. (case number 08-[redacted]). This case provided the basis for a search warrant that was served on [redacted]2008. This search warrant was executed at [redacted]. At approximately the same time as the execution, Fitchburg PD informed the Task Force that a resident at [redacted] received a hand written note, slid under their door, warning that the police would be conducting a raid at that apartment. The note was signed "Officer Markham". The note had obviously been slid under the wrong door. The timing was very odd and to this day the Task Force never found out who wrote the note or how the information was leaked. A copy of that note was received and reviewed for this investigation. In addition, Markham was interviewed about the note. Markham advised she and others in the unit had been made aware of the note. Markham adamantly denied writing the note and did not have any idea who would have authored the item. She added that the investigation was not at all compromised because of what had been written. Arrests were made as a result of the warrant and this investigation did not show that the operation had been compromised.

Another incident was brought to my attention during this investigation. Sgt [redacted] informed me that during a routine audit of the Task Force property room conducted by him in January of 2009, he located a large amount of marijuana (5.85lbs) in Markham's canine locker. This marijuana related to a marijuana seizure by Markham on [redacted], 2008 case 08-[redacted].

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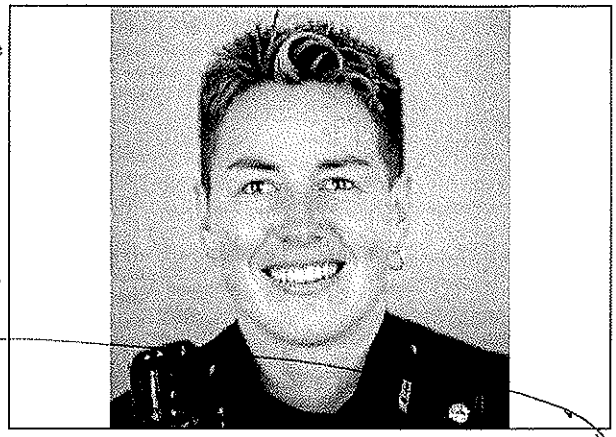
Veteran cop, on paid leave for 14 months, under investigation for misconduct

SANDY CULLEN | scullen@madison.com | 608-252-6137 | Posted: Friday, August 20, 2010 10:15 am



The Madison Police Department is investigating allegations of misconduct by a veteran officer who had been assigned to the Dane County Narcotics and Gang Task Force, according to the city attorney's office.

The specific allegations against Officer Denise Markham, 45, a 21-year veteran of the department who had been a K-9 handler with the Narcotics and Gang Task Force, have not been made public.

Police Chief Noble Wray put Markham on paid leave in June 2009, according to Professional Standards and Internal Affairs Lt. Linda Kosovac. But Kosovac and Wray have refused to say why Markham was placed on leave or whether she was the subject of an internal investigation.

In a letter Wednesday denying a State Journal request for information under the state open records law, Assistant City Attorney Roger Allen said the Police Department "is currently conducting an investigation into complex allegations of non-criminal misconduct" and has placed Markham on paid leave during the course of the investigation.

Allen said the investigation should be completed within 60 days.

In denying the State Journal's records request, Allen said the release of such records could interfere with the investigation. He also wrote "some cooperating witnesses may qualify as informants and thus be entitled to have their identities protected."

Wray, who is on vacation, and Kosovac did not return calls Thursday.

According to the Madison comptroller's office, Markham has also used vacation and sick time for a portion of the period she has been off work.

City records show Markham earned $89,160 last year, including salary, overtime and other compensation. Her current annual salary is $65,988.

Markham declined to comment on the investigation Thursday. She continues to serve as a constable for the town of Rutland, a position she has held for several years.

Andrew Schauer, an attorney with the Wisconsin Professional Police Association who is representing Markham, said, "It would be improper for us to comment while the investigation is ongoing."

Schauer would not discuss the scope of the investigation, but said the length of the investigation shows the Police Department is looking into the matter thoroughly.

"We believe the public will have full confidence in Officer Markham's ability to return to the force," Schauer said.

Officer Dan Frei, president of the Madison Professional Police Officers Association, said he would not comment on any investigation involving an officer.

"Anyone can make an allegation against an officer," Frei said, adding that the majority of times it turns out to be untrue.

"I've known Denise for the entire 17 years I've been in law enforcement," he said. "I've never met a harder-working, more dedicated cop who's given everything she has to this community."

Frei described Markham as "dogged" in her efforts to get criminals off the streets.

Officer Lester Moore, who worked with Markham on the task force, called her "one of the smartest, hardest working people I've ever worked with."

He said Markham, whose nickname is "Mad Dog," "really went after stuff" and "helped a lot of detectives" with their cases.

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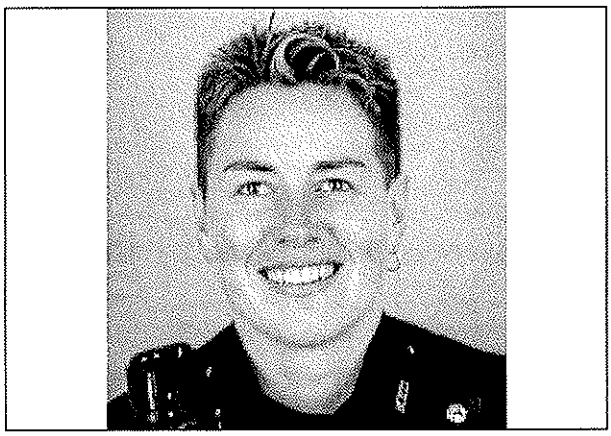
Madison police officer resigns under cloud, will get 8 months' pay

PATRICIA SIMMS | psimms@madison.com | 608-252-6492 | Posted: Friday, February 4, 2011 6:37 pm



A veteran officer assigned to the Dane County Narcotics and Gang Task Force has resigned from the Madison Police Department after an 18-month investigation cleared her of illegal activity but found several policy violations that included "overbearing, oppressive or tyrannical conduct."

Denise Markham, 46, who has been on paid leave since June 2009, resigned on Dec. 31 but will continue on the city's payroll until Sept. 6, when her sick days, vacation and comp time runs out, Police Chief Noble Wray said.

Keeping Markham on the payroll for eight months after her resignation will cost the city $44,415, according to the city comptroller's office, including payment for vacation and sick days she accrued while on paid leave.

Wray, who released a brief summary of findings from the 18-month investigation Friday, said Markham's resignation was part of a negotiated settlement. Given contract provisions and the additional expense and time it could take if Markham appealed to the Police and Fire Commission, "this is really the best deal for all parties involved." Wray said.

Investigators found numerous incidents that revealed a pattern of policy violations over Markham's 4½ years with the task force, Wray said. Wray on Friday declined to release details of those incidents; a request by the Wisconsin State Journal under the state's open records law to view the entire investigative report is pending.

Broadly, investigators found Markham:

- Filed incomplete or inaccurate reports
- Conducted improper searches
- Conducted improper seizures of private property
- Improperly handled controlled substances
- Engaged in "overbearing, oppressive or tyrannical conduct."

"This is a unique case," Wray said. "Generally, we look at officers involved in single incidents or a few violations. What's unique about this case is that it is really a review of the work she'd done."

Andrew Schauer, who represents Markham as an attorney for the Wisconsin Professional Police Association, said she'd been singled out for minor policy infractions. Of all the police reports reviewed during Markham's assignment to the task force, investigators found only one case in which a supervisor questioned the way she handled property, he said.

Markham, a 22-year veteran of the department, agreed to resign rather than fight the allegations, primarily because of "personal family medical issues," Schauer said. Markham declined to be interviewed, he said.

Markham earned the vacation and sick leave she's taking through Sept. 6, Schauer said. "The department took 18 months to investigate," Schauer said. "That doesn't mean she was on some 18-month vacation. Being on suspension is not a vacation."

Markham will be able to collect all the money the city put into her pension fund during the 22 years she worked for the police department. And she has a right to her unused leave, he said. "It's contractural," Wray said. "I understand how this may look from a taxpayer's standpoint, but my hands are really tied as to what the process allows me to do for termination."

Markham made $33.84 an hour, for an annual salary of $65,988, excluding overtime, said Pat Skaleski, payroll accountant in the city comptroller's office.

She has 977.5 hours of sick leave banked, Skaleski said, having earned half a day of sick leave each pay period, including the time she's been on paid leave. She also has about three weeks of vacation and 38 hours of comp time that was carried over since 2007, Skaleski said.

Editor's note: This story corrects an earlier version that said that Markham would not be able to collect money in her pension fund because she was not fully vested.

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Plaintiff

v. Case No. 11 CF 390

DEMARIOUS GRAY,

Defendant

NOTICE OF PROPOSED EVIDENCE TO BE SUBMITTED, PURSUANT TO §904.04(2), STATS.

The defendant Demarious Gray, through his attorney Joseph L. Sommers, pursuant to §904.04(2), Stats. and Whitty v. State, 34 Wis.2d 278.149 N.W.2d 557 (1967) hereby gives notice that he intends to introduce evidence at trial showing:

1. That Ashton Davis committed the crime for which Demarious Gray has been charged.

2. That Ashton Davis and Darell Fowler are members of the `lic squad' that commits armed robberies and home invasions in the Madison area.

3. One home invasion committed by the `lic Squad' was on February 4, 2011 at 1818 Fordem Avenue, Apartment 26.

4. The `lic squad' stashed their guns and fruits of their crimes at 802 Vera Court, Madison, WI.

5. Madison police, especially Det. Thomas Helgren, have taken a systematic course of conduct in order to obscure the criminality and `lic squad' status of both Davis and Fowler.

The due process rights of a criminal defendant are in essence, the right to a fair opportunity to defend against the state's accusations. State v. Evans, 187 Wis.2d 66, 82, 522

#8-a

N.W.2d 554 (Ct.App. 1994), quoting Chamber v. Mississippi, 410 U.S.284, 294 (1973). The right to present evidence is rooted in the Confrontation and Compulsory Process Clauses of the United States and Wisconsin Constitutions. Evans, at 82-83, citing State v. Pulizzano, 155 Wis.2d 633, 645, 456 N.W.2d 325, 330 (1990) Thus, while a court's evidentiary rulings may be nominally labeled discretionary, the court must accommodate the accused's right to present a defense.

Sec. 904.04(2), Stats., provides:

> **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Although other crimes evidence is typically applied against a criminal defendant, §904.04(2), Stats., is not limited to a defendant's acts; it is applicable to any person. State v. Johnson, 184 Wis.2d 324, 336, 516 N.W.2d 463 (Ct. App. 1994)

Before the trial court admits evidence of other acts, it must first determine whether the proffered evidence is relevant in light of §904.01, Stats., and admissible for one of the purposes described in §904.01, Stats., and admissible for one of the purposes described in §904.04(2), Stats. State v. Grande, 169 Wis.2d 422, 430, 485 N.W.2d 282 (Ct. App. 1992) If the evidence is relevant and admissible, the trial court must then determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury. Grande, 169 Wis.2d at 430; §904.03, Stats.

Relevant evidence is evidence that has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable. §904.01, Stats. Before a court allows the introduction of evidence that the defendant was framed, it must determine (1) whether the frame up evidence concerned a fact of consequence to the determination of the action, and (2) if it did concern such a fact whether it made the existence of that fact more or less probable. See State v. Richardson, 210 Wis.2d 695, 706-709 (1997) The "any tendency" standard reflects a broad definition of relevancy and results in a low threshold for the introduction of evidence. There is a strong presumption that proffered evidence is relevant. Id. Relevant proffered evidence of a frame-up should be allowed in unless, pursuant to §904.03, Stats., the probative value of such evidence is outweighed by the danger of confusion of the issues and misleading the jury and by considerations of undue delay and waste of time. See Id.

The defendant respectfully requests that he be allowed to put into evidence at trial the proffer made prior in this motion. The defense puts forth that this evidence will support the defendant's assertion that he is innocent of the crime charged, and that he is being blamed for conduct committed by Davis, and that this includes an active effort by Det. Helgren, and maybe other Madison police officers, to frame him for the benefit of Ashton Davis and Darell Fowler. The evidence in question goes

directly to the motive and identity of the particulars involved, and is necessary in order for the defense to receive a fair trial.

Further, the probative value of this evidence is not substantially outweighed by unfair prejudice. See §904.93, Stats; State v. Speer, 17 Wis.2d 1101, 1114, 501 N.W.2d 429 (1993). And therefore, the evidence should be admissible.

Dated in Madison, WI this 17th day of October, 2011.

Respectfully submitted,

Joseph L. Sommers
Attorney for the Defendant

madison.com

Police say fatal shooting on North Side may be gang-related

ED TRELEVEN | etreleven@madison.com | 608-252-6134 | Posted: Friday, October 21, 2011 8:30 pm

For the past decade or so, after a tumultuous period in the early 1990s, the Vera Court neighborhood hasn't seen much violent crime.

That changed Thursday night when a 20-year-old man was shot to death in what police said Friday might be a gang-related incident.

Madison Police Department spokesman Joel DeSpain said detectives are trying to piece together events surrounding the shooting. He said police were called to the 800 block of Vera Court shortly after 10 p.m. following a report of shots fired.

A car containing the dead 20-year-old man, who apparently was driving, was found on the south side of the 800 block of Troy Drive, DeSpain said.

He said investigators don't yet know whether the man was shot before or after he got in the car.

On Friday, investigators were combing through an apartment building at 802 Vera Court, but police did not say if the building was linked to the shooting.

A second man who was grazed by a gunshot was found in the area by police, DeSpain said. He did not require medical attention.

DeSpain said there doesn't appear to be any connection between the shooting death and another shooting that happened Monday at 3713 E. Karstens Drive, about a block from Vera Court.

In that incident, according to a search warrant filed in court Wednesday, a man was shot in the shoulder in the hallway of an apartment building by a Stoughton man who came to buy marijuana from him.

Police stopped short of saying the Vera Court shooting was gang-related.

"We know that some of the folks here are gang-affiliated," DeSpain said. "We don't know specifically if this is a gang crime. We don't know if this case is about that or not."

The shooting hasn't fazed neighborhood resident Chris Jones, a UW-Madison graduate student who lives on Camino del Sol, just around the corner from where the dead man was found.

He heard the shots Thursday night as he studied for an exam and thought they were firecrackers.

"It certainly rattles you to think that someone was murdered," Jones said. But even though he wouldn't have walked alone at night in the neighborhood before, his overall impression of the neighborhood as being pretty safe hasn't changed.

"I've never felt unsafe in my neighborhood," he said.

The homicide worries District 18 Ald. Anita Weier, who with her husband volunteers as a Reading Buddy at the Vera Court Neighborhood Center.

Long before she was elected to the City Council, she said, Vera Court changed for the better thanks to an effort to improve housing and curb crime that was more prevalent in the neighborhood during the early 1990s.

"Things have been going very well for the last several years," Weier said.

"So it's a concern if crime is starting to happen."

For Tom Solyst, director of the neighborhood center for the past 11 years, the immediate concern was figuring out how to help area children who don't understand what happened.

Many children probably know the victim or his family, Solyst said, and rumors about the shooting are flying around the neighborhood.

The center planned to bring in social workers from the children's schools to help address any questions they have about the situation during the after-school program and assure them they are safe.

"We'll have to see what happens after this because it's a big shock to the neighborhood," Solyst said.

ZIEGLER'S DISHONOR WELL-DESERVED CONFLICTS OF INTEREST ARE ONLY GOING TO BECOME MORE FREQUENT AND SIGNIFICANT IN WISCONSIN'S JUDICIAL SYSTEM.

Posted: Thursday, May 29, 2008 12:00 am

Justice Annette Ziegler deserved a stiffer penalty than her colleagues on the Wisconsin Supreme Court delivered Wednesday.

Yet Ziegler now holds the dubious distinction of being the only Wisconsin Supreme Court justice to ever be disciplined by her fellow justices.

That is a serious and well-deserved dishonor.

It also should put every judge on notice across the state that Ziegler's behavior was terribly wrong and better not be repeated.

Prior to her election to the state's high court in April 2007, Ziegler broke "a bright-line rule" in the Code of Judicial Conduct by presiding over nearly a dozen cases in which she had a conflict of interest, the Wisconsin Supreme Court determined in a near-unanimous decision released Wednesday.

Ziegler, then a Washington County Circuit judge, failed to recuse herself from cases involving West Bend Savings Bank even though her husband was serving on the bank's board of directors.

Ziegler's misconduct "diminishes public confidence in the legal system" even though she made the right decisions in the 11 cases and didn't benefit financially from them, the Supreme Court concluded. Her violations also were "serious" and "willful," the court determined.

The court, however, stopped short of censuring, suspending or removing Ziegler from office because her violations did not involve "some degree of moral culpability," the court wrote.

Because elections for the state's high court have become so awash in partisan politics, it's important to note that all of the court's perceived conservatives agreed that Ziegler violated ethics rules and deserved the public reprimand. Ziegler ran for election as a conservative.

The only justice who dissented from Thursday's decision was outgoing Justice Louis Butler, considered to be more liberal. Butler objected only for procedural reasons. Ziegler didn't participate in the court's deliberations over her fate.

The court should have gone further with a censure or suspension. Yet the court's rebuke of Ziegler ought to serve as an important precedent for holding judges accountable.

Conflicts of interest are only going to become more frequent and significant in Wisconsin's judicial system. That's because of the increasingly political nature of high court elections, which include fat donations to campaigns from parties who will likely appear some day in front of the same judges they financially supported or opposed.

No judge in Wisconsin should dare be so sloppy as Ziegler was. And Ziegler had better recuse herself judiciously in the future because more conflicts are sure to arise.

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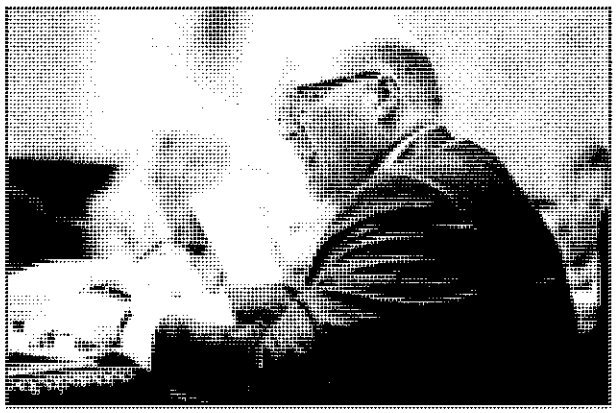
Gableman won't recuse himself from high-profile disputed cases

Associated Press | Posted: Saturday, January 21, 2012 6:00 am



Wisconsin Supreme Court Justice Michael Gableman said Friday he won't recuse himself from three cases, including an attempt to reopen last year's decision that allowed Gov. Scott Walker's contentious collective bargaining law to take effect.

Attorneys in those cases had asked Gableman to remove himself because other parties in the cases were represented by a law firm that defended Gableman against an ethics allegation without billing him.

In his written orders, Gableman cited state Supreme Court decisions that said justices could recuse themselves only when they felt they wouldn't act fairly and impartially or when it might appear that they couldn't do so.

He also cited U.S. Chief Justice John Roberts' recent report that said justices on the nation's highest court should not withdraw from cases because of "partisan demands, public clamor or considerations of personal popularity or notoriety."

Gableman did not go into the merits of the allegations against him or explain why he did not believe there was an appearance of a conflict of interest.

The justice has been under fire since the Milwaukee Journal Sentinel first reported last month that he accepted free legal services from prominent Wisconsin law firm Michael, Best & Friedrich but still presided over cases in which they were representing clients.

Gableman hired the law firm to represent him for two years in an ethics case that arose out of a campaign ad he ran during his successful 2008 run for the court. The Supreme Court split 3-3 on whether Gableman violated the state's judicial ethics code in the case.

The law firm disclosed last month that under its agreement with Gableman, he wasn't required to pay his legal fees unless he prevailed in the ethics case and the state claims board then agreed to pay the bills.

Since the Supreme Court deadlocked on whether he did anything wrong, Gableman couldn't seek reimbursement by the claims board and the firm was not paid.

Of the other two cases that Gableman said he would not recuse himself, one involves the siting of a large heifer facility in Rock County and the other is over whether to use old or new legislative maps for likely recall elections of state senators.

The Milwaukee Journal Sentinel reported that the full court will now have to decide whether to force Gableman from the cases. The court ruled 4-3 last year that justices do not have the power to remove one another from cases.

The Wisconsin judicial ethics code states that judges cannot accept gifts from those who are likely to appear before them. It also says judges must recuse themselves from cases in which a reasonable person might question their ability to be impartial.

Based on those rules, Dane County District Attorney Ismael Ozanne asked the state Supreme Court to reopen the case on collective bargaining and to decide it anew without Gableman's participation. Michael, Best & Friedrich attorney Eric McLeod represented Gableman in his ethics case without charging him attorneys fees — and then went on to work for Walker's administration on the collective bargaining case.

Gableman was in the 4-3 majority that decided the case in favor of Walker's administration.

at that point. (Grieber Dep. at 7) Grieber's report stated that,

> He talked to us about leaving in the next few days to go with his mother to Alabama. We served him with a subpoena and told to him about how important it was for him to appear. He still indicated he did not want to testify.

(Grieber Dep. At 13) Grieber testified that he did not observe anyone serve McCoy with a subpoena, but that McCoy knew he had been served with a subpoena. (Grieber Dep. at 15) Consequently, McCoy was served at least once, if not twice, to appear at the October 27, 2003 trial.

On February 24, 2004, Sommers sent correspondence to Verhoff asserting that, "**It appears that Mr. McCoy was never subpoenaed for the trial the week of Ocotber 27, 2003.**" Sommers requested a copy of the served subpoena. Sommers' correspondence attached an affidavit from McCoy, which failed to state that McCoy was not served with a subpoena for the October 27, 2003, trial. (See Falk Affidavit, Appendix E) Verhoff responded on March 15, 2004, stating that,

> I am unable to produce for you at this time a copy of the subpoena served to Kevin McCoy for the trial week of October 27, 2003, as I am unable to locate a copy of it in the case file. I would note, however, Detective Janet Anderson recalls serving the subpoena on Mr. McCoy on October 7,

WI, with Raisbeck around that time and might have been there when they spoke about the accident. He said Raisbeck was feeling sad about the accident. He said he couldn't remember everything what was said at that time. He was asked to try to remember.

McCoy said we spoke of the outcome, that being Pageloff dieing. He said Raisbeck told him that Raisbeck was driving the car and that it was foggy out there that night. He said Raisbeck said he was driving to fast and about not having a seat belt on at the time of the crash. He said Raisbeck told him that because of the fog and that he (Raisbeck) was driving so fast that he (Raisbeck) could not see the sign on the road and drove off the road. He said the sign was an arrow sign showing that there was a curve in the road.

McCoy said he knows where the curve on Missouri Road is and where the accident occurred because of going to the area after the accident occurred. He said he did not go to the accident scene the day it occurred. He said that Raisbeck and the others had talked about going for food in Waterloo or Sun Prairie and does not know why they would have been on Missouri Road. He said he does not know of Missouri Rd. to take you anywhere and is not a short cut to either of the places they talked of going to that day.

McCoy said he describe Raisbeck as a friend. He said that once before he was with Raisbeck on a "road trip" and Raisbeck drove to fast. He said he did not like hanging around him that much. He said they played sport games together. Also, he said they lived about one block away from one another.

McCoy said he does not want to testify at trial. He was informed he might be required to testify if the case goes to a trial. He said he does not want to be involved in the trial. He said the lawyer or investigator representing Raisbeck has not contacted him.

McCoy was informed he may receive a subpoena at a later time for a court appearance as a witness. He said he would call the D.A.'s office and leave information on how to contact him if he goes to Alabama or moves from his current address.

McCoy said his father is in an unknown prison. He said his mom does not work and receives disability money because of breaking her back. He said he had been in different group homes because of the way he was treated by his parents. He said his father had abused him and is the person that broke his mother's back. He said he has no contact with his father.

Det. Steven Greiber

¶13 Attorney Sommers is aware of this option. In addition to litigating this disciplinary case before the referee, Attorney Sommers has also written a series of letters directly to the court and individual justices trying to persuade this court to intervene in his case or to rule directly on various complaints and allegations against ADA Humphrey, the district attorney's office, the OLR, specific OLR staff, and others.[5]

¶14 In December 2006, after the Sommers and Humphrey complaints were filed, Attorney Sommers filed a letter in the supreme court alleging malfeasance by the OLR. He sent a similar follow-up letter directly to the supreme court justices. These documents were submitted to the court for review pursuant to SCR 22.25(8).

¶15 The court typically considers such complaints against the OLR premature when—as here—the person alleging the

[5] In his filings to this court Attorney Sommers has made allegations of unethical and/or criminal conduct against a number of entities and individuals including the Dane County District Attorney's office, the circuit court, the OLR, both referees, and most of the supreme court justices. He has specifically named the following individuals: ADA Humphrey, Detective Judith Boehm, Dane County Deputy Sheriff Gnacinski, Accident Reconstruction Specialist Robert Krenz, Deputy District Attorney (DDA) Judy Schwaemle, ADA Timothy Verhoff, District Attorney Brian Blanchard, Judge Paul Higginbotham, Judge Robert Pekowsky, Judge Daniel Moeser, OLR Director Keith Sellen, OLR Counsel Julie Falk (now Spoke), Referee Russell Hanson, Referee Stanley Hack, Chief Justice Shirley S. Abrahamson, Supreme Court Justice N. Patrick Crooks, and various unnamed clerk's office staff who are accused of intentionally removing documents from the court record. These allegations far exceed the scope of the matter before the court today, and many of the named individuals have had no formal opportunity to respond to Attorney Sommers' claims.

PETERSON
JOHNSON
MURRAY

Michael P. Crooks
mcrooks@pjmlaw.com

September 19, 2008

Joseph Sommers
Attorney at Law
7 North Pinckney Street, Suite 225-B
Madison, WI 53703

RE: In the Matter of the Disciplinary Proceedings
Against Joseph L. Sommers, Attorney at Law
Case No. 06AP2851-D
Our File No. 1098-0393

Dear Mr. Sommers:

My firm has been retained by Robert Krenz with respect to the defamatory statements you recently made about him on the WIBA *Outside the Box* broadcast. The same holds true for the untrue statements on your website.

As you know, during that broadcast you stated that Robert Krenz testified falsely on Paul Humphrey's behalf during the Raisback trial. You well know that he never testified at trial. You also stated that Robert Krenz's testimony constituted the crime of false swearing. Clearly, accusing my client of perjury that he did not commit constitutes libel under the law. Additionally, during the broadcast, you encouraged listeners to visit your website. On this website, you once again make allegations that my client testified falsely and was involved in what you believe to be a conspiracy in the prosecution of Adam Raisback. These allegations against my client are untrue, and constitute slander under the law.

Mr. Krenz has provided testimony on numerous occasions now, and at no point has he lied under oath, or committed the crime of false swearing as you allege. My client has become aware of your false and defamatory statements made about him and intends to seek all redress available under the law.

It is a crime in Wisconsin to intentionally "communicate any defamatory matters to a third person without the consent of the person defamed." Wis. Stat. § 942.01(1). Wisconsin's criminal defamation statute defines defamatory matter as, "anything which exposes the other to hatred, contempt, ridicule, degradation or disgrace in society or injury in the other's business or occupation." Wis. Stat. § 942.01(2). In addition to permitting criminal prosecution for defamation, Wisconsin also allows for civil claims of defamation for any communications that tend to harm the reputation of another so as to lower him in the estimation of the community or to deter third persons from

associating or dealing with him. (*See* Wis. Stat. J. I. Civil 2500; Zinda v. Louisiana Pacific Corp., 149 Wis. 2d 913, 921, 440 N.W.2d 548 (1989); Restatement 2d, Torts § 559 (1977)). Mr. Krenz is a mechanical engineer who frequently testifies as a reconstruction expert in accident cases. Your comments about his alleged perjury in offering expert testimony fall squarely within both the criminal and civil definitions of defamation.

My client requests that you immediately remove any defamatory or negative remarks about him that are posted on your website, or any website. My client further requests that you publicly retract the statements recently made about him on the WIBA broadcast. Lastly, my client requests that any other written defamatory remarks made about him be immediately repealed.

If you fail to honor my client's request, I will have no choice but to bring legal action against you. In addition to a criminal and civil claim, I believe that the ethical rules governing lawyers also pertain to the remarks you made about my client. Supreme Court rule 20:3.6 states:

> SCR 20:3.6 Trial publicity
>
> (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
>
> (b) A statement referred to in par. (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in deprivation of liberty, and the statement relates to:
>
> (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness. . . .

Additionally, Supreme Court rule 20:8.4 states: "It is professional misconduct for a lawyer to. . .(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Based on these rules, should you chose not to honor my client's requests that you retract the statements made against him, I will have a duty to report your misconduct to the Office of Lawyer Regulation. Additionally, should you choose not to retract the statements made on the WIBA broadcast, I will have no choice but to put the radio station on notice of the defamatory nature of your on air interview. Given that broadcasters can be legally responsible for the content of their programs which they know to be false and defamatory (*see*, e.g., Maynard v. Port Publications, Inc., 98 Wis. 2d 555, 565-66, 297 N.W.2d 500 (1980)), I doubt very highly that any station will continue to run your stories.

Thank you for your consideration and for your anticipated decision to retract and repeal any statements, oral or written, made about my client. Please provide me with copies of the retractions by September 25, 2008.

Very truly yours,

PETERSON, JOHNSON & MURRAY, S.C.

Michael P. Crooks

MPC:GMK:kg

#15-c

PETERSON
JOHNSON
MURRAY

Michael P. Crooks
mcrooks@pjmlaw.com

October 1, 2008

Jeff Tyler
General Manager
Clear Channel Communications, Inc.
2651 South Fish Hatchery Road
Madison, WI 53711

Tim Scott
Program Director
Clear Channel Communications, Inc.
2651 South Fish Hatchery Road
Madison, WI 53711

RE: In the Matter of the Disciplinary Proceedings
Against Joseph L. Sommers, Attorney at Law
Case No. 06AP2851-D
Our File No. 1098-0393

Dear Mr. Tyler and Mr. Scott:

Please be advised that I represent Robert Krenz with regard to slanderous and defamatory remarks made about him by Joseph Sommers during a recent broadcast of your show, Outside the Box. If these statements are not retracted on the air, and if additional statements of this nature are made on your show, my client intends to pursue legal action.

As you will see in the enclosed letter to Mr. Sommers, broadcasters can be held legally responsible for the contents of the programs which they know to be false and defamatory. Although you may not have been previously aware of the false and defamatory nature of these comments, please consider this correspondence to be your legal notice that any suggestion that Robert Krenz committed perjury or false swearing at any time while under oath is untrue, defamatory and warrants legal action. Such slander has a strong possibility of significantly impacting his business of service as a reconstruction expert. As such, should you chose to continue to air Mr. Sommers' untrue and defamatory remarks, my client will pursue all redress available to him under the law.

Thank you for your consideration and for your anticipated cooperation. If you have any questions, please do not hesitate to contact me.

Very truly yours,

PETERSON, JOHNSON & MURRAY, S.C.

Michael P. Crooks

MPC:GMK:kg

Joseph Sommers

From: Joseph Sommers <sommerslawoffice@msn.com>
Sent: Friday, March 30, 2012 9:42 AM
To: 'Dee Hall'
Subject: RE: Release of Supreme Court opinions

Dee:

This is my response:

"Our Supreme Court is shameless beyond characterization. After all this time, this was the best they could do? And of course, Justice Crooks' blatant conflict of interest is dare not mentioned a single time. For reasons that the Supreme Court knows, their decision is my legal demise. Luckily for Raisbeck and a few others, I overcame Kangaroo Courts. I could not overcome my own. However, our bitterly partisan Supreme Court has proved that they could unite against a common enemy, me. The honor of the Wisconsin Courts has been upheld."

I would appreciate it if you would print it in its entirety.

Joe

From: Dee Hall [mailto:DHall@madison.com]
Sent: Wednesday, March 28, 2012 1:58 PM
To: Joseph Sommers; pines@cwpb.com
Subject: FW: Release of Supreme Court opinions

Dear Lester and Joe:

I will be contacting you Friday morning for reaction to whatever decision the court has made in these cases. What is the best way for me to reach you on Friday morning?

Sincerely,

Dee J. Hall
Reporter
Wisconsin State Journal
1901 Fish Hatchery Road
Madison, Wis. 53713
(608) 252-6132
(608) 252-6119 (fax)
dhall@madison.com

#17

Assistant DA Humphrey, Sommers both get 30-day license suspensions, fines in years-old case

DEE J. HALL | Wisconsin State Journal | dhall@madison.com | 608-252-6132 | @DeeJHall | Posted: Friday, March 30, 2012 2:25 pm

After years of contentious proceedings, the Wisconsin Supreme Court on Friday suspended the law licenses of Oregon defense attorney Joseph Sommers and Dane County Assistant District Attorney Paul Humphrey for 30 days each for their actions in a controversial case that concluded in 2005.

The two also must pay hefty fines stemming from the cases. Sommers was fined $47,306 while Humphrey was assessed $16,242. Both had vigorously fought the ethics charges filed against them by the Office of Lawyer Regulation.

The disciplinary action taken Friday against Sommers was less than what the court's referee had recommended, while the discipline meted out against Humphrey was more severe than had been recommended.

The sanctions stem from a criminal case against Adam Raisbeck, who was charged with homicide by negligent use of a motor vehicle after a 2001 fatal rollover crash in eastern Dane County. One man died and another was injured in the Sept. 1, 2001, crash near Marshall.

After three and a half years of legal wrangling, a Dane County jury in 2005 voted to acquit in the case, which hinged in large part on the speed with which Raisbeck, then 17, was driving and whether he hit the brakes as he drove into a curve.

Justice David Prosser issued a strong dissent in the discipline against Humphrey, a 20-plus-year veteran of the Dane County District Attorney's Office.

"I believe a suspension of Attorney Humphrey is unwarranted and unfair and that the procedures followed in this case, especially the long delay in this court, are so irregular that they undermine confidence in the lawyer regulation system," Prosser wrote. "Attorney Humphrey was left twisting in the wind for three and one-half years while this court struggled to resolve the intractable Sommers matter."

Chief Justice Shirley Abrahamson acknowledged the cases dragged on too long, but she strongly rebutted Prosser's charge that the handling was unfair.

Abrahamson wrote that while each matter was considered separately, the court determined that the intertwining facts in the complaints made it important to decide both disciplinary cases at the same time.

"No one anticipated that the Sommers case would take three years before it came here for oral argument," Abrahamson wrote. "Nothing irregular or sinister here."

Multiple infractions

Humphrey was found guilty of two violations of Supreme Court rules for lying to the court about the whereabouts of crucial crash scene photographs that Sommers had been seeking to support his assertion that Raisbeck wasn't speeding.

Sommers was cited for an outburst in which he accused Dane County Circuit Judge Robert Pekowsky of running a "kangaroo court" and for engaging in prohibited pretrial publicity, including repeated allegations of prosecutorial misconduct against Humphrey.

A referee for the Supreme Court recommended that Humphrey be publicly reprimanded. But the majority of the court felt more harsh discipline was warranted. Prosser disagreed. Justices Annette Kingsland Ziegler and Michael Gableman did not participate in either case.

In his defense, Humphrey had blamed sloppy draftsmanship and a heavy caseload for what he characterized as mistakes rather than intentional misconduct.

Madison attorney Lester Pines, who represented Humphrey, reacted to the discipline by saying, "Justice Prosser wrote in his dissent from the majority's opinion (that a) 'suspension of attorney Humphrey is unwarranted and unfair.' I agree with Justice Prosser."

Between 1985 and 2010, the Supreme Court had disciplined 28 elected district attorneys, assistant district attorneys and municipal attorneys, according to a State Journal review.

'An unusual case'

In the Sommers case, the court unanimously agreed to the 30-day suspension rather than the 60 days recommended by OLR in part because of Humphrey's actions in the Raisbeck case. The Sommers decision noted that the court rarely imposes suspensions of less than 60 days but, "This is an unusual case that calls for an unusual result."

The court also declined to assess the full $94,612 in costs against Sommers, as is its usual policy, and opted instead to order that he pay half.

Sommers' defense revolved around what he charged was pervasive misconduct by prosecutors, judges and police in the Raisbeck case. He also had alleged that OLR committed misconduct in the investigation and prosecution of the ethics complaint against him. And he had asked the entire Supreme Court to recuse itself from his case.

In a prepared statement, Sommers remained defiant: "Our Supreme Court is shameless beyond characterization. After all this time, this was the best they could do?

"For reasons that the Supreme Court knows, their decision is my legal demise. Luckily for Raisbeck and a few others, I overcame kangaroo courts. I could not overcome my own. However, our bitterly partisan Supreme Court has proved that they could unite against a common enemy: me."

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Elise Clancy Ruoho
Nicholas E. Fairweather
Kira E. Loehr

Of Counsel:
Cheryl Rosen Weston

February 5, 2007

Mr. Keith L. Sellen
Director
Office of Lawyer Regulation
110 East Main St., Suite 315
Madison, WI 53703-3383

Re: Grievance Against Joseph Sommers

Dear Mr. Sellen:

I am hereby submitting a grievance against Attorney Joseph Sommers (hereinafter "Sommers") for having violated SCR 20:8.4(g) which provides that a violation of the attorney's oath is misconduct. The rule specifically states that: "It is professional misconduct to violate the attorney's oath." The attorney's oath states, in relevant part, at SCR 40.15: "I will maintain the respect due to courts of justice and judicial officers."

In a press release issued today, Sommers made the following statement:

> Mitch Henck, one of the premier names in Wisconsin talk radio endorsed (on the air) Joe Sommers for the Wisconsin Supreme Court. This continues the trend transcending the political spectrum in realizing that our judicial system must be foremost about justice. The priority of justice appears to have little place in the campaigns of either Annette Ziegler or Linda Clifford. Both have shown no willingness to discuss the critical issues of: 1) the growing indifference to wrongful convictions; 2) prosecutors and judges acting above the law; 3) prosecutions commenced as favors; and 4) what is really behind ever-expanding litigation.
>
> Unfortunately, much of the Wisconsin media appears like-minded. Those who want to find out what the media is withholding should visit www.SommersForSupremeCourt.com. Here you can learn, among other things:
>
> How innocent defendants plead out every day in Wisconsin courts, and to how judges are permitted to get away with falsifying the record.

Sommers' website neither substantiates his claim that innocent defendants plead out every day in Wisconsin courts, nor explains how judges are permitted to get away with falsifying the record.

Sommers has made an unsubstantiated attack on the courts of this state and its judges by categorically stating that judges are accepting guilty pleas from innocent defendants and that judges are liars. Such statements are designed deliberately to undermine public confidence in the judiciary. A public attack of this sort on the integrity of the courts is prohibited by the attorney's oath and is a violation of SCR 20:8.4.

The full text of Sommers' media release is enclosed.

Very truly yours,

CULLEN WESTON PINES & BACH LLP

Lester A. Pines

LAP:hkb
Enclosure

Supreme Court of Wisconsin

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CATHE J. HAHN
CYNTHIA SCHALLY
ALICE O'MAHAR

February 22, 2007

Atty. Joseph L. Sommers
Sommers Law Office
P.O. Box 244
Oregon, WI 53575-0244

PERSONAL AND CONFIDENTIAL

Re: Correspondence Regarding Grievance of Atty. Lester Pines

Dear Atty. Sommers:

I am the Intake Investigator assigned for the preliminary evaluation of Atty. Pines' grievance. I have enclosed a copy of the written grievance for your review. Attorney Pines alleges that your January 4, 2007, letter to the Supreme Court Justices constitutes an ex-parte communication and that a press release issued February 5, 2007, violates that attorney's oath.

Please take this opportunity to review Atty. Pines' concerns, as well as your own records, before providing a response. I will expect a response by Thursday, March 15th. I can be reached with any questions or concerns at (877) 315-6941, ext. 200. Thank you for your cooperation in this matter.

Very truly yours,

Jonathan Zeisser
Intake Investigator

case?
A I don't know. Maybe after it was charged. But I don't remember specifically.
Q Now, the Gary Hebl that talked to you in this case, he's a lawyer; correct?
A No. I don't know if I can answer that. I don't know if Gary Hebl talked to me about anything in this case.
Q I think you just testified, did you not, that you thought that maybe Gary Hebl talked to you after this case was charged?
A Maybe. Maybe.
Q Are you aware of a Gary Hebl who is a lawyer?
A I know that there is a Gary Hebl that is a lawyer.
Q He's also a politician; correct?
A I wasn't aware of that.
Q You were not aware that the Gary Hebl is an elected politician sitting in the Wisconsin Assembly?
A Not the lawyer.
Q Yes, the lawyer.
A I thought that was a different person.
Q And how many times have you had conversations with Gary Hebl, the lawyer?
A Ever?
Q Yeah.

A I don't know.
Q Well, five, six, ten?
A When I was in law school, interviewed with the Hebl firm as a law clerk. So I don't know. Several.
Q So when you were in law school what did you say, you interviewed?
A With the Hebl firm for a law clerk job.
Q Did you ever work with the Hebl firm?
A No.
Q Outside of after law school, how many times did you talk to Gary Hebl?
A I can't really say.
Q Well, did you talk to him five times?
A I can't really say.
Q What do you think? What's the best estimate you can give?
A I don't know.
Q Can you tell us whether it's more than ten?
A No.
Q Can you tell us if it's more than 25?
A No.
Q Can you tell us if it's less than 25?
A No.
Q Can you tell us if it's more than 50?
A No.

Q Can you tell if it's less than 50?
A No.
Q Can you tell us if it's more than 75?
A I don't believe it's more than 75.
Q Now, Gary Hebl doesn't do criminal law, does he?
A Every once in a while I think.
Q He does. Okay. And outside of business, can you think of any reason why you would talk to Gary Hebl?
A Outside of what?
Q Outside of business, outside of your job duties as a DA, have you ever talked to Gary Hebl?
A Well, I don't recall. It's possible. I'm active in the Dane County Bar. It's possible.
Q And do you recall ever talking to Gary Hebl in connection with the Dane County Bar?
A I've answered the question as best I can. I really don't know when I talked to Gary Hebl, how many times or in what context.
Q My question is this: Can you recall whether or not you've ever talked to Gary Hebl in connection with the Dane County Bar?
A I don't know.
Q What other ways would you talk to Gary Hebl besides business and the Dane County Bar?
A I don't know. Can't think of any.

Q Do you consider Gary Hebl to be a friend?
A No.
Q Do you consider him to be a friend of any of your superiors?
A I don't know.
Q Is he a friend of Timothy Verhoff?
A I don't know.
Q Is he a friend of Judy Schwaemle?
A I don't know.
Q Friend of Brian Blanchard?
A I don't know.
Q Now, in this matter, did you ever talk to Gary Hebl and discuss with Gary Hebl the victim in this case working with you?
A I don't recall.
Q Well, if a civil attorney calls up the district attorney's office and requests that they undertake a prosecution, do you consider that to be permissible?
A I suppose it could be under certain circumstances. If they're a victim of a crime or something, sure.
Q How about if they do it because they're representing somebody on a civil matter?
A We get that every once in a while. Usually I don't make those decisions. They go right to the deputies because they're the ones that do the intake decisions

Prosecutor says data missing on traffic death scene

By Mike Miller

The Capital Times

A prosecutor told a judge Tuesday that the Madison Police Department no longer has any of the measurements taken by officers at a traffic death scene last year.

The dispute came in the case of Maria Ledezma-Martinez, 24, who is charged with homicide by negligent operation of a motor vehicle in connection with an accident last summer that claimed the life of Grete Merz, 67, a tourist from Germany.

Merz and her husband were crossing West Washington Avenue at South Fairchild Street when Ledezma-Martinez allegedly ran a red light while making a turn and struck and killed Merz.

Assistant District Attorney Paul Humphrey, in a hearing on what evidence must be turned over to the defense before trial, said a diagram of the accident and death scene, purportedly to a scale of 1 inch equals 20 feet, is the only document that exists. He said the defense could make its own calculation of measurements from the diagram.

State Assistant Public Defender Luis Cuevas demanded that he be given the actual measurements, and said there was no way he could prepare for trial in the case if he did not have them.

Although Humphrey insisted the measurements of the accident scene no longer exist, an incredulous Dane County Circuit Judge James Martin said someone had to have initial measurements in order to make the diagram Humphrey provided.

Martin ordered Humphrey to produce measurements as they related to different items shown on the diagram. The judge set a deadline for producing the numbers and indicated he would probably not allow testimony on measurements at the trial if the defense did not have them.

E-mail: mmiller@madison.com

1-21-04 Cap Times

Summary of Testimony: Robert Krenz

Mr. Krenz will testify about his training and experience in the area of motor vehicle accident reconstruction, including his BS and MS degrees, and his professional training subsequent to that. He will testify about his professional experience in motor vehicle accident reconstruction and his prior testimony as an expert in the area of motor vehicle accident reconstruction. He will testify about his other credentials including memberships in certain professional organizations and specialized training and research.

He will testify that he reviewed the reports in this case, including those of Deputy Gnacinski, his diagrams, and the photographs. He also visited the scene of the crash and made some of his own measurements and observations. He concluded that Deputy Gnacinski's measurements and the diagram were correct.

He will testify that based on his experience and observations and measurements, etc., and to a reasonable degree of scientific certainty, the speed of the Raisbeck vehicle at the time it began to skid was between 73-81 mph. He will testify that these speeds do not account for energy loss due to striking trees, bushes, etc. The critical speed of the curve was 66 mph. He will explain what those figures mean and how he got to those conclusions.

He will testify about energy based analysis and critical speed analysis, their differences, and his techniques. He will testify about the scuff marks and what they signal regarding braking or other activities of the Raisbeck vehicle. He will testify that it does not appear that the driver of the Raisbeck vehicle locked the brakes prior to leaving the road. He will testify about how he came to his conclusions and other observations about the crash and its cause and effect.

times. August 15 -- yeah, I guess they are all on the same day.

Q Do you agree in looking at Exhibit 39 that it fairly and accurately portrays the e-mail exchange that you had with Mr. Krenz on August 15, 2002?

A I think it does.

Q Would you further agree that the last page of exhibit 39, page 3 of 3, is the summary of testimony of Robert Krenz that you drafted?

A No. He drafted it.

Q Okay. And that summary is generated after the exchange of e-mail, correct?

A No.

Q You weren't refining the summary by means of the exchange of e-mail?

A Right. It was created while we were e-mailing.

Q All right. Isn't it fair to say that this last page of Exhibit 39 summarizes the final analysis of Robert Krenz?

A It summarizes the analysis at that time. I don't know if it was the final because there was a final analysis much later than that. I don't know if it really changed this or not.

Q The Raisbeck case came on for a hearing again on August 22, 2002, correct?

A We'll move from the left. The furthest left one is about 22 to 23 feet, the next one is about 48 feet, the next one is about 49 feet, and the last one is about 82 to 83 feet.

Q Thank you. And the e-mails that you talked about that went back and forth from you and Paul Humphrey, they were dated, correct, August 15, 2002?

A I think you have those.

Q Just look at it there.

A Yes.

Q And did I give you a copy of the summary yet? Have we entered that into evidence or no?

A I don't know.

Q Okay.

MR. SOMMERS: Can you mark this?

(Exhibit 6 marked for identification).

Q First I'm handing you what is marked as Exhibit 6. Do you see that? Can you identify that?

A It indicates that it's a summary of testimony of Robert Krenz.

Q That's a document that was prepared, correct, by Paul Humphrey?

A I don't know. I would have to assume that.

Q But it wasn't prepared by you?

#25-a

A It was not.
Q It was prepared after your conversations with Paul Humphrey?
A I don't know when it was prepared.
Q Well, at the top, does it give a fax date up at the top from the DA's Office?
A Yes, it does.
Q What date is that?
A August 23, '02.

MS. SCHWAEMLE: I'd like to clarify something here. Does the copy that you have that is marked Exhibit 6 have any date on it?

MR. SOMMERS: Sure. Right at the top. If you want to use this one instead, we'll do that.

A There's no date that it was prepared, but there is a fax date.
Q From the Dane County DA's Office?
A Well, yes. Your copy is better.

MR. SOMMERS: How about we take this off and mark this one as an exhibit then?

(Exhibit 6 remarked for identification.)

Q Okay. Now you've been handed a new marked Exhibit 6, and at the top you can read that pretty

#25-b

what to put in your summary as it related to braking?

A. Yes.

Q. Wasn't it your conclusion that you could say to a reasonable degree of scientific certainty that there was no evidence of locking of brakes?

A. Yes.

Q. Didn't you also tell me to take out the part about applying brakes because you couldn't say to a reasonable degree of scientific certainty that brakes were applied, or something along those lines?

A. Yeah, and my concern, and I don't recall the specific wording, my concern was that I couldn't define how much the brakes were being applied. I mean, whether they're very lightly or nearly to full braking.

Q. Did your conclusion about this braking-- Well, when did you first give me the preliminary speed estimate?

A. That was late February I believe of last year.

Q. You followed it up then in the summer, June or July, with your conclusion, after you've done the analysis; correct?

#26-a

right?

A. Yes, the phrasing and I, as I talked about with Mr. Sommers, I couldn't define the degree of braking, but I could define that it was not locked wheel.

Q. Now, when you did that, when you did the summary, there was a certain phrase that was underlined in there; do you remember that? I think it is exhibit?

MR. SOMMERS: Seven.

MR. HUMPHREY CONTINUING:

Q. Seven; is that correct?

A. Yes, I didn't do this, but there is a second to last sentence of the last paragraph is underlined.

Q. Now, sometime subsequent to that, didn't I have a discussion with you about what they really want to know is whether your conclusion is whether brakes were applied at all?

A. Yes.

Q. Is that when you provided me the explanation for that it's imprecise science, but there is some evidence that braking may have occurred?

A. Yes.

Q. Okay. How long ago was that that we had that

#26-b

it was not necessary nor does it appear possible for me to specifically define the degree to which the black marks were generated by skidding or critical speed scuffs throughout the entire course of those marks. As I have emphasized in my communications with Attorney Humphrey the black marks are relevant in that they represent energy loss with some braking. The distinction between "braking" and "tire marks" was unfortunately lost in the course of the questioning at the hearing.

7) Second, on page 158 of the transcript (a copy of which is attached as Exhibit 2 to this affidavit), in an attempt to provide a succinct answer I responded "yes" when I should have provided a more complete answer. My "yes" signified the idea that I believed at the time of the hearing (as I believe now) that some braking occurred before the car left the roadway. My "yes" answer was not intended to imply that a specific description of the brake application was a necessary component to my opinion. As I discuss above in this affidavit, this is not the case.

8) Attached to this affidavit as Exhibit 3 is an accurate hard copy of e-mail communications between me and Attorney Humphrey. These communications are consistent with two memories I have. First, that Attorney Humphrey talked at times about reserving my testimony for rebuttal, if needed, in the Raisbeck case so that discovery regarding my opinions might not be needed. Second, that I communicated to Attorney Humphrey on multiple occasions that my analysis did not depend on a professional determination on my part regarding the specific degree of braking.

9) Since braking and my opinions about braking have become such a focus in the Raisbeck case, be advised that when looking at photographs from the scene, I note that the black marks in the final feet before the car leaves the roadway suggest braking. I note two lines in close parallel that suggest marks made by a set of treads in a manner consistent with locked wheel (or near locked wheel) braking in those final feet. However, this observation does not alter my energy analysis or my opinion of the vehicle speed.

Robert J. Krenz

Robert J. Krenz, P.E.

Subscribed and sworn to before me this
22nd day of May, 2003.

DIANE MUELLER NOTARY PUBLIC STATE OF WISCONSIN

Diane Mueller

Notary Public, Dane County
My commission ~~is permanent~~ expires 1/11/2004

#28

today's hearing we sought to get all of the e-mails between Humphrey and Krenz and there exists one and Mr. Sommers has a copy of it already.

MR. SOMMERS: I don't believe I do have a copy of it. I guess if she's willing to give it, I would ask that the court order that they provide me with all of the e-mails. Is that what she's willing to say?

MR. SCHWAEMLE: Yes, one exists and I'm fairly confident it was already sent to him but I will be happy to send it again.

THE COURT: Okay, you will have those.

MR. SOMMERS: I think his own affidavit disputes that there's only one e-mail.

THE COURT: This is a case that we need to get tried and I sense now that having these decisions made, for better or for worse depending on where you sit, it is incumbent upon everyone sitting at the table to open book this case wherever possible, absolutely, because let's just get the facts before the jury.

MR. SOMMERS: Your Honor, I guess what -- I have never seen this e-mail before and I tell you I know what I know because this e-mail -- and I know we can do it now. Even in the very first paragraph of this e-mail I see why they never gave it to me. It's a bombshell and I don't know -- can I raise it now?

#29-a

THE COURT: You got motion time and I hear these exchanges about what McCoy said. That's what cross-examination is about and the jury gets to hear the whole thing laid out, both sides get a chance to ask him why he said what he did, when he said what he did, to whom he may have said it, all these things. Presumably they can come out in cross-examination and, you know, we have opportunities to destroy the credibility of a witness. It may work, I don't know.

MR. SOMMERS: Your Honor, is it okay if I just read this e-mail then into the record?

THE COURT: I don't think now is the appropriate time to do it.

MR. SOMMERS: To add to the record I think, Your Honor, this is -- this is the biggest --

THE COURT: It should come in in some fashion as part of a motion. It's not coming in now. This reporter is exhausted and gave up her time and she reports elsewhere this afternoon. We are off the record now. Thank you very much.

MR. SOMMERS: Your Honor, it's -- my client's condition for bail, I asked to have one condition changed. My client right now's been very good, as you know, on conditions of bail. His employment has changed. There's been a rule that he can't --

#29-b

10/22 WI State Journal

Prosecution loses key expert witness in vehicular homicide case

By Ed Treleven
Wisconsin State Journal

A long-running vehicular homicide case against a Marshall man took a serious blow Thursday when a Dane County judge said the prosecutors' key expert witness cannot testify at the trial.

Circuit Judge Daniel Moeser barred crash analyst Robert Krenz from testifying at the trial of Adam Raisbeck, 20. Raisbeck was charged nearly three years ago with homicide by negligent driving for causing the death of Jerry Pageloff, 33, on a rural Marshall road on Sept. 1, 2001.

Moeser's decision was punishment for prosecutors' failure to promptly turn over e-mail messages between Krenz and Assistant District Attorney Paul Humphrey, who was assigned to the case at the time. In the messages, Krenz said that Humphrey could say that Raisbeck had applied, but not locked, his brakes before his car left Missouri Road and rolled over in a soybean field.

Despite the messages, Humphrey continued to say in court and in a letter to Raisbeck's attorney, Joe Sommers, that Krenz did not know whether Raisbeck had applied the brakes before the crash. Raisbeck's speed has been a key issue in the case.

Moeser ruled that the failure to promptly turn over the e-mails was a violation of discovery — the process by which opposing sides in a legal dispute share information before a case is tried.

"The state's case is obviously very damaged," Sommers said. "I'm appreciative of what Judge Moeser did."

Deputy District Attorneys Judy Schwaemle and Tim Verhoff, who took over the case from Humphrey earlier this year, declined comment. Moeser put the case on hold at prosecutors' request so they can appeal to the state 4th District Court of Appeals.

The case had been scheduled to go to trial on Nov. 15.

Contact Ed Treleven at etreleven@madison.com or 252-6134.

#30-a

Judge: Expert may not testify

Rules prosecutor misled defense

By Mike Miller
The Capital Times

The prosecution in the Adam Raisbeck vehicular homicide case received a major setback Thursday when a judge ruled that a prosecutor had misled the defense on what its expert would say. The judge also ruled that the expert could not be called to testify at trial.

It was the latest twist in the strange case, which has yet to go to trial although the accident leading to the charges against Raisbeck, 20, of Marshall, occurred more than three years ago.

In the latest development, Dane County Circuit Judge Daniel Moeser said Assistant District Attorney Paul Humphrey distorted the position of his expert witness, Robert Krenz, on whether Raisbeck used his brakes just before the fatal crash. "I think it is quite misleading," Moeser said of Humphrey's description of what Krenz would have said at trial.

Under the rules of discovery, the prosecution and defense trade summaries of what experts contend happened in such crashes. At issue was an exchange of e-mails between then-prosecutor Humphrey and Krenz, his accident reconstruction expert. In one e-mail, Krenz said to Humphrey that instead of saying Raisbeck "did not brake," it would be better to say "he did not lock his brakes."

Humphrey, in an e-mail to defense attorney Joseph Sommers, phrased all of that differently. Humphrey said, "I don't know whether Mr. Krenz determined whether Mr. Raisbeck applied his brakes," but that he determined "he did not lock his brakes."

Moeser said that was misleading enough to warrant sanctions against the prosecution and said the sanction would be that Krenz could not testify at trial.

That leaves the state with either having to appeal Moeser's decision before trial, or trying to get another expert to testify about the accident.

Raisbeck is charged with homicide by negligent operation of a motor vehicle for a Sept. 1, 2001, accident which killed Jerry Pageloff II, 33, also of Marshall, and with causing injury by negligent driving for injuries sustained by another passenger, Andre Ross.

Thursday's action was not the first time in the case that Humphrey has been found by a judge to have misled the defense or the court. Former Dane County Circuit Judge Paul Higginbotham, who was assigned to the Raisbeck case until he was appointed to the Court of Appeals, earlier ruled that Humphrey had lied in an affidavit.

Sommers also has raised the ire of judges, and at one hearing when the case was assigned to Reserve Judge Robert Pekowsky, shouted and yelled at the judge that he was railroading his client and was running a kangaroo court. Pekowsky found Sommers in contempt for his outburst and is thought to have turned the matter over to the Office of Lawyer Regulation.

The trial, which has been delayed several times in the past, is set for jury selection on Nov. 15.

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Raisbeck vehicle leaving the roadway?
A At least the potential, yes.
Q Please, why don't you go to your transcript page here.
A Certainly.
Q On page 160. Please, go to 160.
MS. SCHWAEMLE: What date are we talking about?
MR. SOMMERS: We're talking about the date of April 7, 2003.
Q Please, go to page 160.
A I'm there.
Q Okay. And page 160, go down to what is line 13. Isn't it true that you were asked, You told him that he was, and that's he being Greg Anderson, was correct that the photo evidence indicated that the brakes had been applied to some degree. Was that true?
A Yes.
Q Now, when did you make your determination of 73 to 81 miles an hour for the first time?
A That was -- and I can pull out my notes on that, if you'll bear with me. On or about -- the initial calculations were February 12 of 2002.
Q Okay. February 12, 2002?

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A Yes.
Q Now, please, also go to page 155 of the transcript.
A I'm there.
Q And when you made your initial analysis of 73 to 81 miles an hour, that was after you had reviewed the photographic evidence?
A Yes.
Q And when you reviewed the photographic evidence, isn't it true that you concluded to a reasonable degree of scientific certainty that the brakes were applied?
A To some degree, yes.
Q Well, please go down at line 20, and there it says, Looking at Exhibits 3, 4 as well as 5, 6 and 8, those were photos, can you tell from any of those pictures to a reasonable degree of scientific certainty that the brakes were applied? And you answered yes.

MS. SCHWAEMLE: I object to the form of the question. The witness doesn't have the exhibits that he was referring to then. That's what he said, of course. The transcript speaks for itself, but you're asking him now to look at exhibit numbers that he doesn't have.

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lesser degree of braking.

Q But you could tell there was some degree of braking?

A Yes.

Q And so when did you pass on to Paul Humphrey that it was your belief that there was some degree of braking? What was the date?

A I don't know. Early on. Early on I described to you that it was a less specific conversation. Sometime later -- I can't give you the date.

Q Tell me when you said to Paul Humphrey that the photographic evidence indicates that there was some degree of braking. When did you tell him that?

A And that conversation would have probably been sometime after our initial discussion wherein I indicated that we can't rely on Deputy Gnaciski's initial calculations because those rely on no brakes being applied.

Q And so when you initially talked to Paul Humphrey about this case, you told him there were problems with the deputy's analysis?

A I did.

Q And that was February of 2002?

A Yes.

Q You told him that there was problems with the deputy's analysis in February of 2002 because you

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knew that the photographic evidence indicated that there could have been some braking?

MS. SCHWAEMLE: I will object to the form of the question, the content of the question. This whole line of questioning is not relevant. It is also leading. I have a continuing objection with regard to what he told Humphrey and when he told him.

Q Go ahead.

A Yes.

Q And so, in fact, that could have been, since you did your analysis on February 12, 2002, you probably spoke to him within a day or so of that?

A I don't know that quickly, but it could have been.

Q So it's possible, within a day or so of February 12, just very shortly thereafter, you had passed on to him the photographic evidence basically discrediting the deputy's analysis?

A Could have, yes, for those reasons we spoke of a few minutes ago.

Q And the deputy's analysis could be shown to be in error just due to the photographic evidence?

A Yes.

Q Now, were you aware that the deputy had testified on January 28 and again on February 15, 2002 to a

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Q Did you ever tell Paul or anybody, was it ever your position in this case that you would be able to testify that the driver of the Raisbeck vehicle never locked his brakes prior to leaving the roadway?

A In an instantaneous -- well, I want to make sure that the jury has a clear understanding of my answer to you, and we're looking at an entire distance of roughly 82 feet of skid marks, and my opinion would be it was not locked through there, but, by the time it left the road, could there have been the end of that mark being locked, the answer to be yes. The answer to that is yes.

Q So if I understand it correctly, tell me if I'm right or wrong, this is not your position that it does not appear that the driver of the Raisbeck vehicle locked the brakes prior to leaving the road?

A For the totality of the marks, I would say yes; for the end of the marks, I'd say no, it's not true at the very end of the marks.

Q So isn't this real simple? You just cannot testify that he never locked his brakes prior to leaving the road? It's that simple; right?

A Yes.

Q Did you ever tell Paul Humphrey that you would be

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attorney in this case, was representing that the critical speed calculation was still applicable to this case?

A No.

Q Were you aware that he was representing all the way through September of 2002 when he was trying to push the case to trial that he was still representing that the critical speed calculation was applicable to this case?

A No.

Q Were you aware that he was representing all the way through September of 2002 that there was basically no discrepancy between your opinion and that of the deputy's?

A No.

Q Are you aware that, throughout September 2002, he made a representation that they are not contradictions, they are just simply different speed estimates?

A I'm not aware of what he was communicating.

Q If he did that, that's not correct, is it? There is a contradiction between your speed estimate or your speed formula and that of the deputy's; correct?

A The one that he bases off of the critical speed, absolutely.

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Q Absolutely yours voids it; correct?
A Yes.
Q In regards to, let's say, your speed calculation of 73 to 81 miles per hour, in that range of 81, are you saying that it's more likely 81 than 73, or is it equally 73 as 81?
A Equal.
Q Now, there is no way to define to a greater degree whether it's more likely 73 or more likely 81?
A Correct.
Q And when you come up with that speed, that's at the very beginning of when the tire marks were made?
A Actually, I had ignored the first substantial distance. I only used an effective braking distance of about 68 feet, yeah, I think that was it, so even though the longest mark was 82 --

MR. SOMMERS: Please, read me back the last answer, please.

(Off the record.)

Q Correct me if I'm wrong, but you just defined the 68 feet as being the braking distance, didn't you? You just stated that under oath.
A No.

MR. SOMMERS: All right. This is very important. If there's a way, I'd like

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COUNTY OF DANE

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May 12, 2003

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Re: State v. Raisbeck, 01 CF 2708

Mr. Sommers:

In light of Mr. Anderson's report regarding Deputy Gnacinski's second calculation of speed, I contacted Mr. Krenz to analyze Deputy Gnacinski's calculations and Mr. Anderson's analysis. Mr. Krenz generally agrees with Mr. Anderson on this point. Mr. Krenz believes that while Deputy Gnacinski arrived at the correct result, his methodology was flawed. According to Mr. Krenz, Deputy Gnacinski's use of the median drag factor does not fully take into account the different distances of deceleration and drag factor that may apply. Mr. Krenz believes that based on Mr. Krenz' training and experience, this is not the correct way to determine the coefficient of drag factor. Mr. Krenz also agrees that Deputy Gnacinski's calculations in this report seem to suggest locked brakes for an extended distance. As you already know, Mr. Krenz does not believe the brakes were locked for an extended distance. I have not discussed with Deputy Gnacinski his second set of speed calculations or Mr. Krenz' or Mr. Anderson's evaluation of them.

In light of this new information, and our confidence in Mr. Krenz, we have decided that Mr. Krenz will be our expert in the area of crash reconstruction and particularly as that reconstruction applies to speed calculations and analysis. Accordingly, we will not be offering expert opinion in the area of speed calculation from Deputy Gnacinski.

Paul W. Humphrey
Assistant District Attorney

cc: Hon Paul Higginbotham

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A. Yes.
Q. Okay.
A. Yes.
Q. Now, you would agree then, would you not, that this would at least be prima facie evidence, Krenz's affidavit, that, one, the expert summary provided was false?
A. It would seem like that.
Q. And you would also agree that this would also be -- Krenz's affidavit is contradicted by his sworn testimony?
A. That would seem so.
Q. And you would agree that if Krenz's sworn testimony is that to a reasonable degree of scientific certainty the brakes had never been locked and he says here in his -- in his sworn affidavit that the brakes had never -- that -- that he said the brakes were locked or near locked, that that means basically both sworn statements cannot both be true?
A. That's a reasonable conclusion to reach.
Q. In fact, there's no other conclusion to reach, is there?
A. Probably not.
Q. Okay.

A Would have certainly concluded.
Q Good.
MR. SOMMERS: Now let's have this marked as an exhibit.
(Exhibit 29 marked for identification)
Q This is page 61 of Robert Krenz's deposition of April 8, 2005. I think that is identified at the top. Do you see that?
(Witness looking at exhibit)
A Yes.
Q And it was done by Verbatim, and this is page 61; correct?
A It's certain to be accurate. Thank you.
Q And let's go down to the bottom. There's a circle. And you would agree that there the question is, "So isn't this real simple? You just cannot testify that he never locked his brakes prior to leaving the road? It's that simple; right?" To which Krenz testified, "Yes"?
A That's what it says.
Q So you would agree, too, that Krenz's testimony right there again is in direct contradiction to his prior --
A It seems to be contradictory to me.

Q -- his prior sworn testimony? Now, you would agree that there's such a thing as false swearing? You're aware of that; right?
A Yes.
Q And false swearing basically is if one testifies on two separate dates to two things that are contradictory knowingly?
A Okay.
Q That's laymen's definition.
A All right.
Q Wouldn't you agree that here there is at least a prima facie case that that's what occurred in this case?
A These things suggest that, yes.
Q And will you agree that someone should be at least obligated to look into it?
A Yes.
MR. SOMMERS: Let's have these two stapled together and have that marked as an exhibit please.
(Exhibit 30 marked for identification)
Q I'm handing you what has been marked as Exhibit No. 30, and that's pages 79 and 94, is it not, of Robert Krenz's testimony on April 8, 2005?

A Looks like it.
Q You would agree, would you not, that, in regards to the top of page 79, basically Mr. Krenz is testifying that the photographic evidence that relates to the brakes being locked is the evidence that relates to basically at the edge of the road?
A Can I get a little closer?
Q Sure.
(Witness looking at exhibit)
A I see that, yes.
Q Would you agree, too, that, on 94, he reiterates that? "That it's the photograph that indicates that the brakes were locked prior to leaving the roadway." Or it's that photograph. Yeah. "That photograph just prior to leaving the roadway." And he says, "Just prior to, yes."
A Yes, I see it.
Q Now, that photographic evidence that he is talking about is the very same photographic evidence that Paul Humphrey was responsible for not being produced in court because he told Deputy Gnacinski to remove the subpoenaed evidence.
A Were you asking me?
Q Yeah. You would agree, would you not, that the fact that this photographic evidence is the same

photographic evidence that proves an expert summary and expert testimony was false is, in itself, very disturbing?
A It's certainly a concern.
Q You would agree, would you not --
A What I don't remember is what Judge Higginbotham did with it or anything, and I'm not remembering what --
Q The deposition testimony was not in front of you ever because you were gone as of summer of 2004. His testimony in front of Judge Higginbotham, though, was in front of you, as was the affidavit.
A You mean it was part of the file?
Q It was part of the file and, actually, something I had raised in my motion of May 4, 2004. Now, the point I'm just trying to get to right now is you would agree, would you not, that it is a very disturbing, let's say, coincidence that the photographic evidence that Humphrey had not produced in court on August 22, 2002 is the very same photographic evidence that proves that the expert summary is false and proves that the expert testimony is false?
A I don't know. I can't tell from all this.
Q You would agree, would you not, though, that there should be some investigation into whether or not that

A. -- to your knowledge and he thought that they were and he testified that he -- that they weren't, it sounds like a contradiction in facts that -- that would very likely be false.

Q. Okay. Don't you agree that that has been absolutely established in this case? Now, go up to his testimony to what he said. Isn't it true that when Krenz -- go up to that paragraph. Isn't it true that when Krenz testified on April 7th, 2003, he said that to a reasonable degree of scientific certainty there was no evidence that the brakes had been locked?

A. Uh-huh.

Q. Okay? And would you not agree that this -- just on that specific -- that narrow, narrow issue, that was Krenz has admitted later on that that was not his true opinion?

A. Okay. As it relates to the fact of the wheel locking, I agree. That appears to be a difference. I think we talked about this the other day.

Q. All right.

A. There's just a little wrinkle about locked or nearly locked wheel braking, uh-huh.

Q. So you would agree just on that narrow issue Krenz

testimony as shown on Exhibit No. 17?

A You'll have to direct me to the exact lines again so I can compare them.

Q Sure, we can do that. It's pretty simple.

A They appear to be inconsistent.

Q Not inconsistent, they are in direct contradiction, correct?

A I wouldn't say direct, but I would say they don't mesh up. I would say they're inconsistent.

Q Why would you say it's not in direct contraction?

A Because wording is not identical.

Q So the concepts are in direct contradiction?

A Right.

Q Okay. Good. Did you ever ask Robert Krenz to why he would have testified on April 7, 2003, in a matter directly contradictory to what he testified to on April 8, 2005?

A I don't have a specific recollection one way or another.

Q You would agree, would you not, that if a district attorney put an expert witness up to commit false -- strike that.

You would agree, would you not, that if a district attorney had an expert testify falsely, that would be malfeasance?

criminal charges?

A. It's -- it is possible that it can happen. The rules provide that if our office receives I think the word is "credible information" of an attorney's possible criminal conduct, that we may refer it to an appropriate criminal law enforcement authority.

Q. All right. And you would agree, would you not, that the known -- the elicitation of perjured testimony would be a crime by a criminal defense attorney?

A. I think ~~that's true~~, yes.

Q. And so you would agree, would you not, that if what I alleged in regards to Paul Humphrey and Robert Krenz was substantiated, it could -- it could have possibly led to Paul Humphrey being criminally charged?

A. It is possible, yes.

Q. Okay. And would you agree, would you not, that if Paul Humphrey was criminally charged, by definition Robert Krenz could also possibly be criminally charged?

A. No. Those are separate questions. I mean, in the relationship of these facts it is possible, but it's not necessary. Depends on an analysis of who

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knew what when and it's -- it's not a conclusion you can draw just simply because they were both involved in the case.

Q. All right. And you would --

A. It depends on who knows what the true facts are and who's reporting it. It may depend upon what information they had shared between each other, all of that. So, I mean, we're talking hypothetically so I have to answer hypothetically.

Q. All right. But if it was substantiated that Robert -- or that Paul Humphrey had knowingly elicited false testimony from Robert Krenz --

A. Uh-huh.

Q. -- you would agree, would you not, that then Robert Krenz would by definition be a possible witness in the prosecution of Paul Humphrey?

A. Yes. It is possible, uh-huh.

Q. And you would agree then, would you not, by definition whoever was charging Paul Humphrey could then expand the prosecution to charge Robert Krenz?

A. It is possible, yes.

Q. Okay. And so -- and you would agree, would you not, that if Attorney Tibbetts set things in motion that led to Robert Krenz being charged

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Q. Okay. And that testimony was going -- that case was ongoing at the time of her investigation, correct?
A. Right.
Q. And in fact, he never testified on her behalf until after her investigation was concluded?
A. According to the documents you showed me, that appears to be right.
Q. Yes. And so wouldn't you agree that if she terminated her relationship with Mr. Krenz, for one, he then could not testify on her behalf?
A. No. I presume she would hire another expert.
Q. All right. But though Mr. Krenz couldn't testify, could he?
A. Well, under the scenario you're proposing to me.
Q. He could not testify, correct?
A. Right.
Q. All right. And are you aware -- and -- and -- one, are you making an assumption that this is the only time Robert Krenz has worked for Attorney Tibbetts?
A. I don't have any other knowledge of any other cases.
Q. Okay. Well, did you have knowledge of this case prior to today?

A. Not this particular case. I'd heard of the issue, like I testified before, recently.
Q. So you're saying prior to you sitting here today you have never had any information given to you that -- that -- that asserted in specific that Attorney Tibbetts had used Robert Krenz in Green County Case 04-CV-255?
A. Not that specifically. I don't recall seeing that before, but -- uh-huh. I remember hearing about it, like I mentioned before, that she or her firm had retained Mr. Krenz for a case like I mentioned to you before. That's what I remember now.
Q. Isn't it true actually what you just have testified to is false? Isn't it true that you have received -- that you received in specific an e-mail that actually gave the case number?
A. It's possible, Mr. Sommers. I just told you I don't remember it today.
Q. Well, isn't it possible actually that you received that in the not-so-distant past?
A. If you can show it to me and I would recognize it, I might, but I don't remember it today.
Q. Well, isn't it true that you actually received that very e-mail from reporter Dee Hall?
A. Again --

Q. That information was passed on to her and she passed it on to you in an e-mail?
A. When would this have been?
Q. I'm asking you. You're saying as we sit here today --
A. Uh-huh.
Q. -- Dee Hall did not tell you in an e-mail that Attorney Tibbetts had been retained -- Attorney Tibbetts had retained Robert Krenz in Green County Case 04-CV-255?
A. It's possible.
MS. FALK: Objection, asked and answered.
MR. SOMMERS: All right.
MS. FALK: And the witness has testified that he does not recall the specific e-mail.
MR. SOMMERS: Yes, and I believe that that testimony is false and --
MS. FALK: And I will also indicate that the attorney -- that Attorney Sommers is getting argumentative with the witness.
MR. SOMMERS: Well, all right.
Q. You recognize that you have an obligation, do you not, to testify truthfully?

A. Yes.
Q. All right. Good. Now, and you have -- and you recognize, do you not, that for an attorney to testify that they do not recall when they do recall, that would not be truthful?
A. I agree.
Q. Okay. Let's go to -- okay. Where is three of -- I have these letters mixed up. I was trying to find the letter that you received. Here. All right. Go to -- what letter is the -- February 8th, 2006, letter. Here we go. Okay. That was a letter, did you not, last week concede that your office had received from me?
A. I believe I did.
Q. All right. And let's go to page 3.
A. (Witness complies.)
Q. Would you agree, would you not, that in the paragraph that is -- that has the -- that says fourth?
A. Okay.
Q. That in that paragraph I basically raise the issue of Attorney Tibbetts?
A. Yes.
Q. I basically ask you to how she was chosen?
A. I see that, yes.

calculations by Deputy Gnazinski; Humphrey's alleged failure to comply with court orders and subpoenas to turn over evidence; Humphrey's alleged subpoena of witnesses to come in to the district attorney's office to provide statements related to the Raisbeck case; and the deputy district attorneys', including both deputy district attorney Timothy Verhoff and deputy district attorney Judy Schwaemle, asserted failure to investigate Humphrey's handling the Raisbeck matter, and a potential scheme by the district attorney's office to "cover up" misconduct, malfeasance, and criminal conduct allegedly engaged in by Humphrey during the Raisbeck trial, as well as other criminal trials. See copies of Humphrey depositions, Gnazinski deposition, and Krenz deposition made part of the attached *Affidavit of Julie M. Falk.*

Sommers has abused his powers in taking the depositions of the Dane County investigators, as well as the Dane County district attorneys, in order to enter into a fishing expedition to prove a cover up, misconduct, malfeasance, and criminal conduct on behalf of the district attorney's office during both the Raisbeck trial, as well as other criminal trials handled by Humphrey.

The actions of the district attorney's office and its investigators during the Raisbeck trial have no relevancy to the four corners of the disciplinary complaint, are not likely to lead to the discovery of admissible evidence, and are not relevant to Sommers' affirmative defenses, as it relates to Sommers' misconduct. This disciplinary action is not about any alleged misconduct or malfeasance on behalf of the district attorney's office, but alleged misconduct by Sommers during the course of the Raisbeck trial.

C. Sommers should be prohibited from retrying Humphrey's disciplinary proceeding.

The OLR already thoroughly investigated allegations of misconduct, as it relates to Humphrey's

actions during the Raisbeck trial. The OLR determined that Humphrey engaged in misconduct, brought the allegations of misconduct to the Preliminary Review Committee, which found cause to proceed against Humphrey, and a hearing was held, where Referee Russell Hanson found that Humphrey engaged in misconduct. See Referee Hanson's August 2, 2007 *Report and Recommendation* attached hereto. Humphrey's disciplinary matter is currently on appeal with the Wisconsin Supreme Court.

Sommers has made it clear he disagrees with the allegations the OLR brought against Humphrey and believes OLR should have prosecuted Humphrey for further alleged misconduct. Sommers' disciplinary proceeding is not the correct forum for Sommers to retry the Humphrey disciplinary matter and delve into any instance of misconduct or malfeasance that Sommers believes the OLR should have charged against Humphrey in Humphrey's disciplinary proceeding.

II. OLR is entitled to a protective order as to the whole of the pre-charging process.

Sommers should be prohibited from deposing as to any aspect of the pre-charging process, because: (a) he is not entitled in this proceeding to investigate the specifics of OLR's investigation of him; (b) SCR 22.40(1) precludes the OLR from providing its file, notes and documents collected during the investigative process; (c) Sommers cannot delve into information that is privileged; (d) Sommers cannot obtain information that is subject to the work product doctrine; and (e) Sommers is not entitled to delve into the issue arising out of OLR's processing of this matter prior to its filing of the disciplinary complaint.

A. This referee already concluded that Sommers' cannot bring a counter-claim against OLR alleging malfeasance.

Q Did you ever -- as of right now -- do you think that an objective cursor could find that it could affect your impartiality to be investigating Paul Humphrey's subordination of perjury of Robert Krenz at the same time that you had a business relationship with Robert Krenz?

A I didn't feel that it affected my impartiality at all.

Q Did you think that a reasonable person could be concerned that it could?

A Based upon the nature of my practice and the nominal dealing with Mr. Krenz, I don't think that they would believe it was a conflict.

Q Now, you are aware, are you not -- well, one, would you agree that if you concluded that Robert Krenz committed perjury on behalf of Paul Humphrey, that that would have been serious misconduct on the part of Robert Krenz?

A Well, that's not my duty and responsibility as a committee member or as an investigator. We are not to make credibility determinations. We just investigate and take down the facts and our committee does not make credibility determinations.

Q Well, in regards to whether or not Robert Krenz committed perjury on behalf of Paul Humphrey, did you ever investigate that?

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A I did.
Q Who did you talk to?
A I talked with all of -- as I recall, I talked with all of the witnesses that were involved in the matter that we as a committee thought were pertinent. I remember interviewing members of the DA's Office. I remember interviewing Mr. Krenz.
Q For example, did you ever interview Deputy Gnacinski?
A I believe that was assigned to another committee member to do.
Q In fact, nobody ever interviewed him, correct?
A I believe she had troubles locating him and speaking with him. I remember she was frustrated with that.
Q The answer is no one spoke to Deputy Gnacinski, correct?
A I don't believe so.
Q No one spoke to Deputy Sewell, correct?
A I don't recall.
Q Did anyone speak to Judge Pekowsky?
A I believe that was assigned to another committee member.
Q You believe someone spoke to Judge Pekowsky?
A I'm not positive, but we divvied up the list of witnesses.
Q We'll get to that in a second. Do you believe someone

providing would be documentation contained in our file. I am in the process of putting those documents together.

REFEREE HACK: In response, are you prepared to provide all of that?

MS. FALK: I'm not prepared to provide all of it at this point, but I will be providing all of those documents as soon as I can review the files and get all those documents together.

REFEREE HACK: My point is are you objecting to the --

MS. FALK: Not to number three, no. With regard to number four, he asked for all information, evidence contained in OLR's file pertaining to their investigation of whether Expert Robert Krenz committed perjury on behalf of the Dane County District Attorney's Office.

Essentially with regard to number four, basically the OLR's jurisdiction is to investigate attorney misconduct and not misconduct of an expert witness. The Office of Lawyer Regulation has not investigated or initiated an investigation as

to whether Expert Robert Krenz committed perjury so the OLR would have no documentation with regards to number four. So we're not objecting to it. We're just indicating we do not have any documentation.

The only issue would be with regard to document request number two which asks for Mr. Sellen's brief/memorandum to the PRC, but it is the OLR's position that, under 22.40, the memorandum to the PRC is confidential information, that it is the work product of Attorney Keith Sellen and our agency, and also under 22.07 with regard to the Preliminary Review Panel procedure, it does indicate that the meetings and deliberations of the PRC are private and confidential, and, therefore, the OLR would be asserting that it is not entitled to submit document request number two due to the confidentiality of that document.

REFEREE HACK: Mr. Sommers, your response.

MR. SOMMERS: First, your Honor, in regards to her complaint about the format of my motion or whatever, I really don't know

REFEREE HACK: She said yes. It's been asked and answered.

Q Is that answer true? Was that answer true, yes or no?

10:05 A As I was attempting to indicate, the --

MR. SOMMERS: Your Honor, I would ask that she give a responsive answer.

Q Was that answer true, yes or no?

REFEREE HACK: She is attempting to answer the question. I'm going to let her answer the question because that's one of the major issues that you're raising this morning. So let her answer the question.

A I first saw this transcript last week after I learned that I was going to be subpoenaed here today. In reviewing it, as I look at the response, I believe that I may have said "I didn't" and the court reporter may have put "I did," and as I indicated, we would not have investigated whether Mr. Krenz committed perjury but we would have investigated any allegations against Mr. Humphrey. So I wanted to clarify that.

REFEREE HACK: Before you go further, I think, in our conference, I raised the question of whether or not that

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Shirley S. Abrahamson
Chief Justice
Jon P. Wilcox
Ann Walsh Bradley
N. Patrick Crooks
David T. Prosser, Jr.
Patience D. Roggensack
Louis B. Butler, Jr.
Justices

A. John Voelker
Director of State Courts

Cornelia G. Clark
Clerk of Supreme Court

February 12, 2007

Mr. Joseph L. Sommers
P.O. Box 244
Oregon, WI 53575-0244

Mr. Joseph L. Sommers
7 N. Pinckney Street, Ste. 225-B
Madison, WI 53703

Re: Complaint against Keith Sellen and OLR

Dear Mr. Sommers:

Your correspondence asserting a complaint against the Office of Lawyer Regulation (OLR), staff counsel Julie Falk, and OLR director, Keith Sellen has been forwarded pursuant to SCR 22.25 (8) to the Supreme Court. The court has reviewed your complaint and the supporting materials.

SCR 22.25 provides a procedure for evaluating allegations of misconduct or malfeasance by lawyer regulation system participants.

When a respondent makes such an allegation in the context of a pending disciplinary proceeding and the allegations involve the substance of the alleged disciplinary violations, it is the court's general practice to deem the allegation premature and advise the respondent that no action will be taken at this stage of the proceeding. It is appropriate for the referee to consider such allegations in the context of the disciplinary proceeding in the form of a counterclaim or challenge to the

#43-a

complaint. If you are not satisfied with the referee's resolution of the matter, you retain the right to appeal the referee's determination. If, upon conclusion of the disciplinary proceeding, you remain unsatisfied with the resolution of the allegations against the OLR, you retain the right to initiate an allegation of malfeasance or misconduct pursuant to SCR 22.25.

Accordingly, no further action will be taken regarding your complaint at this time.

Sincerely yours,

Shirley S. Abrahamson
Chief Justice

SSA:jac
cc: Referee
Keith Sellen

OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
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MADISON, WI 53701-1688

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February 10, 2010

To:

Julie M. Scott
Office of Lawyer Regulation
110 E. Main Street, Ste. 315
Madison, WI 53703

Carol Kornstedt
Office of Lawyer Regulation
110 E. Main Street, Ste. 315
Madison, WI 53703

Joseph L. Sommers
Sommers Law Office
P.O. Box 244
Oregon, WI 53575-0244

David C. Rice
Asst. Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Stanley F. Hack
Hack & Brodkey, S.C.
200 E. Ravine Drive
Mequon, WI 53092-6052

William J. Weigel
Office of Lawyer Regulation
110 E. Main Street, Ste. 315
Madison, WI 53703

Thomas J. Basting
125 N. Hamilton St., #905
Madison, WI 53703

You are hereby notified that the Court, by its Clerk and Commissioners has entered the following order:

No. 2006AP2851-D Office of Lawyer Regulation v. Joseph L. Sommers

On December 1, 2009, respondent-appellant, Attorney Joseph L. Sommers, filed a letter with this court asserting that he was unable to file his Statement on Transcript in his appeal from a Report and Recommendation filed by Referee Stanley Hack on October 16, 2009 because a "significant number of transcripts relating to this matter are not reflected on the Record Index."

By order dated December 14, 2009, this court directed the clerk of the supreme court to prepare an index of the record filed by Referee Hack in this matter and provide the referee and each of the parties with a copy of this index. The parties were then directed to file a list identifying any additional documents or transcripts in their possession that they believe should supplement this record on appeal within 14 days of receipt of this index. The Clerk of Supreme Court provided the parties and the referee with a copy of this index on January 5, 2010.

The responses were due January 19, 2010. The Office of Lawyer Regulation filed a response dated January 14, 2010. Referee Hack filed a response dated January 18, 2010, accompanied by some additional documents that have been filed in the record in this matter. Attorney Sommers did not file a response to the index. A copy of the current record index as of February 9, 2010 accompanies this order. Therefore,

IT IS ORDERED that on or before February 24, 2010, Attorney Joseph Sommers shall file his Statement on Transcript in the above-captioned matter.

Ziegler and Gableman, J.J., did not participate.

David R. Schanker
Clerk of Supreme Court

RECORD INDEX

Office of Lawyer Regulation v. Joseph L. Sommers
2006AP2841-D

Updated February 9, 2010 to include exhibits
provided by Referee Stanley Hack
(changes in **boldface**)

1. Deposition of Janet Boehnen, August 7, 2007. [Condensed copy, missing marked exhibits.]

2. Deposition of Robert Krenz, P.E., August 8, 2007. [Condensed copy (no exhibits marked).]

3. Deposition of David Gnacinski, August 17, 2007. [Original, including marked exhibits.]

4. Transcript of Reporter's Notes of Proceedings before Referee Russell Hanson, August 22, 2007. [Condensed copy (no exhibits marked).]

5. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, October 18, 2007. [Original, including marked exhibits.]

6. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, October 31, 2007. [Original (no exhibits marked).]

7. Deposition of Jeanne M. Higuera, January 7, 2008. [Condensed copy, including marked exhibits.]

8. Deposition of Robert Krenz, P.E., January 14, 2008. [Copy, missing marked exhibits.]

9. Transcript of Reporter's Notes of Disciplinary Hearing in the Matter of Joseph M. Sommers before Referee Stanley Hack, February 29, 2008. [Original (no exhibits marked).]

10. Transcript of Videotape Deposition of Keith Sellen, April 9, 2008. [Copy, missing marked exhibits.]

11. Transcript of Videotape Deposition of Keith Sellen, April 14, 2008. [Copy, missing marked exhibits.]

12. Transcript of Videotape Deposition of Keith Sellen, April 15, 2008. [Copy, missing marked exhibits.]

13. Transcript of Telephonic Proceedings before Referee Stanley Hack, May 5, 2008. [Printout (no exhibits marked).]

14. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, May 9, 2008. [Original (no exhibits marked).]

15. Transcript of Videotape Deposition of Judge Robert Pekwosky, May 20, 2008. [Original (no exhibits marked).]

16. Transcript of Telephonic Proceedings before Referee Stanley Hack, May 21, 2008. [Original, missing marked exhibits.]

17. Transcript of Telephone Conference before Referee Stanley Hack, May 22, 2008. [Original (no exhibits marked).]

18. Deposition of Margery Mebane Tibbetts, August 15, 2008. [Original, missing marked exhibits.]

19. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, August 15, 2008. [Original, **including exhibits 1-5 and 7-19**.]

20. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, August 28, 2008. [Original, including marked exhibits.]

21. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, September 8, 2008. [Printout, **including exhibits 6-18**.]

22. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, September 25, 2008. [Original, including marked exhibits.]

23. Deposition of Detective Janet Boehnen, November 20, 2008. [Condensed copy, missing marked exhibits.]

24. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, March 3, 2009. [Original (no exhibits marked).]

25. Transcript of Reporter's Notes of Telephonic Proceedings before Referee Stanley Hack, March 12, 2009. [Original (no exhibits marked).]

26. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, March 27, 2009. [Original (no exhibits marked).]

27. Transcript of Reporter's Notes of Telephonic Proceedings before Referee Stanley Hack, April 30, 2009. [Original (no exhibits marked).]

28. Transcript of Reporter's Notes of Telephonic Proceedings before Referee Stanley Hack, May 18, 2009. [Original (no exhibits marked).]

29. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, May 27, 2009. [Original, **including exhibits 1-5**.]

30. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, May 28, 2009. [Original, **including exhibits 6-37**.]

31. Transcript of Reporter's Notes of Telephonic Proceedings before Referee Stanley Hack, May 29, 2009. [Original, **referencing exhibits from 5/27 and 5/28/2009**.]

32. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, June 15, 2009. [Original, **including exhibits 1-57**.]

33. Transcript of Reporter's Notes of Proceedings before Referee Stanley Hack, June 16, 2009. [Original, **referencing exhibits from 6/15/2009**.]

New Text Document

I, Kevin P mcCoy, swear that the following is true: 1. I was subpoenaed by Adam Raisbeck for the hearing on January 2 2004.
After this I called and talked to Assistant district attorney Paul Humphrey. Paul Humphrey told me that I did not have to be in court on January 2. Because of what Mr. Humphrey told me, I did not show up for court.

Between fall of 2002 and October 21 2003, I have been interviewed several times by police officers, investigators about Adam Raisbeck and the accident he was in. I have told them the same story over and over and they keep asking me the same questions, I don't know why they keep asking me the same questions. I don't understand why they keep telling me that they do not believe me.

2. When I met on October 21, when I met with Paul Humphrey and another man, we talked again about the Adam Raisbeck case.
They again accused me of lying. At that time, no one gave me a subpoena and at that time, no one asked if I had been served with a subpoena.

3. October 21 was the second time I met with assistant district attorney Paul Humphrey, I met with him earlier, I believe around June of 03. At that time I talked with Paul Humphrey about the Raisbeck case.
I went to court in June because I received a paper that I thought was a subpoena, saying that I had to be in court that day.

All of the above is true. And I say so under oath, Kevin McCoy

Kevin McCoy DOB 5/6/85

Subscribed and Sworn to
on January 13, 2004.
[illegible]
My Commission expires 2005.

#45-a

1-30-04

I, Brandon Satterstrom, having duly sworn, states as follows:

1) I was the roommate of Kevin McCoy DOB 5-6-85, from Approx. late Summer 2003 to Oct 31, 2003.

2) During this period approximately 5-6 times, police officers/investigators came to our residence to interview Kevin McCoy. Each of these interviews took at least 10 minutes. After the police officers/investigators left Kevin McCoy informed me that the interviews were about the Adam Realbeck case.

3) Kevin McCoy during the time we lived together, that the police were harassing him (McCoy) about the Realbeck case.

4) On October 21st 2003, I took Kevin McCoy to the Dane County Courthouse. I took him there because Kevin McCoy told me he was subpoenaed to court on that day.

Subscribed & sworn to
on January 30, 2004
[illegible]
My Commission expires 2005

Brandon Satterstrom

#45-b

May, 24, 2004

I Ryan Meyer here by State under oath that I do not know Adam Raisbeck. When I was in the Dane County Jail, I was in the same cell block with Kevin McCoy. McCoy told me that he had to serve Approximently 20 days. Halfway through this. McCoy a visit in the pod from a female who McCoy told me was from the D.A's office. After this visit McCoy told me that to get out of the Dane county Jail. he had to agree to testify against Raisbeck. McCoy got out of jail Prity soon after.

Ryan Meyer
Ryan Meyer

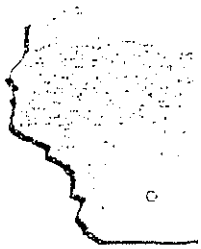
Rhonda L meyer
RHONDA L MEYER
Witness

Subscribed and Sworn to
on May 24, 2004
[illegible]
NOTARY PUBLIC STATE OF WISCONSIN
My Commission expires 2005

Fred DuBois
[illegible]
Witness

#45-c

DISTRICT ATTORNEY
DANE COUNTY



BRIAN W. BLANCHARD
District Attorney

JUDY SCHWAEMLE
Deputy District Attorney
Felony Unit

MICHAEL S. WALSH
Deputy District Attorney
Juvenile Unit

TIMOTHY R. VERHOFF
Deputy District Attorney
Criminal Traffic
& Misdemeanor Unit

SUZANNE C. BEAUDOIN
Manager,
Victim/Witness Unit

NANCY S. GUSTAF
Manager,
Deferred Prosecution Unit

MARLYS K. HOWE
Manager,
Domestic Violence Unit

NANCY L. MAVES
Office Services Supervisor

January 20, 2004 Confidential Personnel Matter

Assistant District Attorney Paul Humphrey
Dane County District Attorney's Office
Room 523, City-County Building
Madison, WI 53703-3346

Dear Mr. Humphrey,

Following my investigation, this is a formal reprimand that will be placed in your personnel file here in this office and also at the State Prosecutors Office. It relates to one intentional action and one intentional omission by you in connection with one witness in the Raisbeck case.

The intentional action was your seeking a warrant for the arrest of witness Kevin McCoy for his "failure to appear" for a trial that you knew had been postponed in advance of the trial. This warrant could have resulted in McCoy's arrest and his sitting at least a night in jail for not appearing at trial that you knew had not occurred. The decision to seek this warrant was an abuse of your authority and was not justified by any compelling circumstance. Judges and law enforcement should have confidence that proposed orders and warrants sought by this office are merited and well supported. This was neither.

The intentional omission was failing to disclose to opposing counsel in any form the oral statement of the defendant, made to McCoy and recorded by Det. Greiber, until after opposing counsel focused on this witness and I began looking into the matter. The statements were powerfully incriminating and were beyond doubt statements you would want to elicit at a trial. Even beyond the fact that it is the universal practice of Dane County assistant district attorneys to promptly turn over all such reports to move litigation forward and to avoid unnecessary litigation over claims of "trial by ambush," these were clearly statements explicitly covered under Section 971.225(1)(b), stats. These were defendant statements of which you were aware in handwritten form on the eve of one scheduled trial and which you possessed in final written form on the eve of a second scheduled trial. I am troubled by your explanation that you intended never to disclose this report because you did not

want to drag Det. Greiber into this case, and hoped that some day you would possess for discovery purposes a similar statement of McCoy independently taken by Det. Anderson. This ad hoc approach shows a serious lack of appreciation for the significance of our discovery obligations.

Your action and your omission have the potential to diminish the confidence of the courts, defense counsel, law enforcement, and the public that this office plays fair, does not harass witnesses, and does not hide the ball. These constitute abuses of your authority as a prosecutor to, in the first instance, avoid unnecessary harassment of witnesses and, in the second instance, comply fully with both the spirit and the letter of our discovery obligations. If you repeat either of these forms of abuse of authority, the full range of discipline would be available to me, including termination of your employment.

Your explanations for the warrant and the withheld report demonstrate to me that you cannot fairly represent the interests of the state in the Raisbeck case. For example, your statement that you did not want to turn over to the defense the report of the McCoy interview because you did not want to involve Det. Greiber in this case indicates to me that you will distort ordinary criminal justice procedures and practices of this office in this case because of the strong feelings you have about defense counsel in this lawsuit. These emotions have unfortunately clouded your judgment on this case. For these reasons, I am asking Judy Schwaemle and Tim Verhoff to assume responsibility for the Raisbeck file. I know I can count on you to cooperate fully with Judy and Tim in taking over the file, making sure that all discovery is made, and preparing for trial.

In addition, I require that in the future you comply with your discovery obligations by promptly providing to opposing counsel or pro se litigants complete copies of all reports—police or investigator-generated, crime laboratory, criminal histories, etc.—in any case to which you are assigned, unless there is a potential justifiable reason not to do so, such as a need to protect the identity of an informant, danger that a separate investigation could be jeopardized, someone's privacy or reputational interest would unduly and unfairly at risk, etc. In any instance in which you seek to withhold a report or a portion of a report, you must obtain approval of a supervisor to do so. You also may not direct an investigator or law enforcement officer not to prepare a written report without first obtaining approval of a supervisor. Also, should you become aware of any discoverable statement that is not documented or summarized in a report, you are required to prepare a summary of that statement and provide it to defense counsel.

I hope that this reprimand allows you to reflect on your duties as a prosecutor to investigate, charge, and prosecute cases with vigor and determination, but without a "game playing" mentality. Please reread at your earliest convenience Sec. 971.23, stats., and SCR 20:4.4 and SCR 20:3.8. I appreciate that you feel "set up" by defense counsel in this case, but prosecutors are not permitted to engage in "tit for tat" tactics in response to abusive defense tactics, and your actions potentially undermined the reputation and credibility of this office.

You are reminded that Employee Assistance information is available through the State Prosecutor's Office at the state Department of Administration to assist you with any personal problems you may have that may be affecting your ability to carry out your work duties.

Your work classification is covered by a collective bargaining agreement. If you believe this action was not based on just cause, you may appeal this decision through that agreement's grievance procedure.

Sincerely,

Brian W. Blanchard

C: DDA Judy Schwaemle
DDA Timothy Verhoff
Stuart Morse, Wi-DOA
John R. Burr, Association of State Prosecutors

A. I wasn't involved in that at all.
Q. Okay. And no one has ever come to you and told you that?
A. That he -- that he signed a warrant?
Q. No, that he signed off on an affidavit.
A. Not specifically, no.
Q. Has anyone gone over Paul Humphrey's sworn affidavit with you?
A. No.
Q. Never?
A. No, never.
Q. Brian Blanchard has never asked you about it?
A. No. I've never discussed the case with Brian.
Q. All right. The Office of Lawyer Regulation has never asked you about it?
A. No.
Q. Okay. Nobody -- has Timothy Verhoff ever asked you about it?
A. No.
Q. No one has?
A. No one.
Q. Okay. I'm handing you what is Exhibit No. 6 and this is a sworn affidavit of Paul Humphrey. Please take a look at that and go to the second page. Okay. Please read me that top paragraph.

A. That the case was postponed by the court later that week but the district attorney's office was unable to locate McCoy to call him off.
Q. Okay. Now, in regards to Kevin McCoy though, is you did -- you were able to call off Kevin McCoy if you so decided?
MS. FALK: Objection. It calls for speculation.
Q. All right. It's true though that you were able to call Kevin McCoy to call him off?
A. We had those two numbers.
Q. Right. So basically on October 24th through October 27th if you so decided, you could have called those numbers to inform Kevin McCoy that the trial was off?
A. Correct.
Q. So the reason why -- okay. Wouldn't you agree then that line 3 is somewhat disingenuous?
MR. RICE: Do you mean untruthful?
MR. SOMMERS: I said disingenuous.
A. Can you define what that means?
Q. Disingenuous means deceitful, not the full truth, misleading.
A. You're asking for my opinion on this line?
Q. Yes.

A. As to the truth of it?
Q. Yes.
A. I -- I would say that it's not true.
Q. Okay.
A. It's not accurate.
Q. Thank you. That's all.

EXAMINATION

BY MS. FALK:
Q. Just one last clarification question. What is the reason that you didn't -- why did you not call Kevin McCoy to let him know that the trial was off?
A. Once again, our -- he was a difficult to locate witness and given that he had specifically told us that he was in the middle of moving to a southern state with his mother, we weren't sure that we would be able to locate him for service for the next court date so our hope was that he would come in for the October 28th date and we would serve him with notice at that time.
Q. And then that would guarantee that he would be served for the new trial date?
A. He would have at least gotten notice of it, yes.
Q. Okay.

EXAMINATION

BY MR. SOMMERS:
Q. Just one follow-up.
MR. SOMMERS: Are you through?
MS. FALK: Yes.
Q. Were you ever made aware that on October 23, 2003, the court ordered that the subpoenas were continued, held over for the new trial date?
A. Yes.
Q. So that means Kevin McCoy -- that means that you're aware that Kevin McCoy did not have to be served for a second time. He was still legally obligated to show up for the new trial date?
A. To my -- to my knowledge he did not know what the new trial date was though.
Q. But you had the phone numbers to tell him what the new trial dates were?
A. Correct.
Q. Okay. That's it.

EXAMINATION

BY MS. FALK:
Q. Just one last question. Do you know if you would have called those numbers whether or not you would have been able to reach Mr. McCoy?
A. I don't.

EXAMINATION

Please meet w/ Asst. D.A. Paul Humphrey on Friday July 5 at 3 p.m. at the City County Bldg; Rm 523 (210 North Luther King Jr. Blvd) to discuss this case.

Subpph

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN, Plaintiff

V.

Court Case No. 01CF002708
Agency Case No. DCSD 01-0053163

ADAM J RAISBECK, Defendant

STATE SUBPOENA AND REQUEST TO APPEAR IN DISTRICT ATTORNEYS OFFICE

TO: KEVIN MCCOY 5/6/1985 W/M
C/O PARENT OR GUARDIAN

655-1592

Please meet with District Attorney **Paul W Humphrey** in Room 523, City-County Building, 210 Martin Luther King Jr. Blvd., Madison, Wisconsin, at time to be advised on July 9-11, 2002 for administrative purposes and directions to court.

SUBPOENA

YOU ARE HEREBY REQUIRED TO APPEAR on July 9-11, 2002 at 09:00 AM, pursuant to Wis. Stat. 885.01, before the Honorable PAUL B HIGGINBOTHAM, Dane County Circuit Court Branch 17, at the City-County Building, 210 Martin Luther King Jr. Blvd., Madison, Wisconsin, to testify or give evidence as a witness in a JURY TRIAL scheduled in this action.

- **PLEASE DISREGARD PREVIOUS SUBPOENA. NEW DATES: JULY 9-11, 2002.**
- **PLEASE CONTACT JEANNE HIGUERA, VICTIM/WITNESS UNIT, AT 608-267-8866 WITH ANY QUESTIONS OR CONCERNS.**
- **PLEASE CHECK WITH JEANNE HIGUERA THE WEEK OF JUNE 24, 2002, AS TO WHICH DATE AND TIME TO REPORT FOR TRIAL.**

FAILURE TO APPEAR IN COURT MAY RESULT IN PUNISHMENT FOR CONTEMPT.

Issued 06/07/2002.

K. 2. Blanchard

BRIAN W. BLANCHARD
District Attorney

WITNESS FEES: **Mileage** _____ **Date** _____ **SPECIAL INSTRUCTIONS:** In order to insure prompt and certain payment of your witness fees, please bring this subpoena with you to the District Attorney's Office the day you testify. Please correct your address if you have moved.

If you require the assistance of auxiliary aids or services because of a disability, call 266-4211 (TDD 266-4625) and ask for a Victim/Witness Specialist.

24 HOUR COURT CANCELLATION LINE
Sometimes hearings are canceled. To avoid having to appear unnecessarily, **you** must call 266-4456. The recording is updated daily at 4:30 p.m. call anytime but be sure to call the night before. You must appear if your case is not included in the cancellation list.

Issued by Det Janet Anderson (DCSO) on Tuesday 6/11/02 at 1310.

Among the photos withheld that day was a close-up from the Missouri Road crash scene that experts for both the prosecution and defense eventually agreed showed that Raisbeck was going slower than the 89-mph estimate that was a key basis for the criminal negligence charge.

The higher the speed, the easier it is to prove criminal negligence, Anderson said, and 89 mph would be "a slam dunk."

After he saw the photos, Anderson estimated the speed at 68 to 73 mph; Krenz pegged it at between 73 and 81.

In the end, Gnacinski lowered his speed estimate from 89 to 77, by changing his reckoning of the length of tire marks on Missouri Road.

At trial, the district attorney's office used engineer Dennis Skogen, president of Skogen Engineering Group, as an expert after Krenz was disqualified by Judge Daniel Moeser. The judge ruled Humphrey had misrepresented Krenz's opinions about the speed to Sommers and to the court. Skogen estimated Raisbeck was driving 70 to 76 mph when he went off the road.

Pines sought to downplay the point, noting all of the estimates were above the 55-mph speed limit, which he said pointed toward negligence.

"There's a car that went off the road at a high rate of speed, whatever that speed was, and went a long distance through a wooded area before it stops and a passenger in the vehicle, Jerry Pageloff, is dead," he said.

But Sommers said the photos and the story they told about Raisbeck's speed were crucial.

"If we would have had those (photos), he (Raisbeck) never would have been bound over (for trial)," Sommers said. "They wouldn't have a case. That's why Humphrey had to make sure we didn't have those photos."

REPORT ABOUT FRIEND

The Office of Lawyer Regulation also is seeking to sanction Humphrey for allegedly failing to comply with his ethical obligation to turn over evidence to the defense. The agency alleges Humphrey failed to turn over to Sommers an Oct. 27, 2003, report in which Raisbeck's friend, McCoy, who at one time said he knew nothing about the crash, later said Raisbeck had admitted driving too fast that foggy night.

Humphrey told Office of Lawyer Regulation investigators he believed he wasn't required to turn over the document. When questioned about the report by his boss, Dane County District Attorney Brian Blanchard, Humphrey referred to the three-page report as "trial prep" and "notes."

However, both the Office of Lawyer Regulation and Blanchard said the document was clearly a witness statement that Humphrey should've given to Sommers. Blanchard reprimanded Humphrey in 2004 for failing to turn over the statement and removed him as prosecutor on the case. To punish the prosecution, Judge Moeser barred McCoy from testifying.

In an interview last fall, Humphrey acknowledged the McCoy statement was "probably something that should've been turned over." In a motion filed in June, Office of Lawyer Regulation prosecutor William Bedker said it was clear Humphrey withheld the statement hoping to spring it on Sommers, giving the defense attorney "a scant window" to prepare a response to McCoy's "damning" statement.

Sommers agreed. "(Raisbeck) would've gone down, and he would've gone to prison."

17 DAYS IN A COMA

At the center of the controversy is Adam Raisbeck, now 23. The tall, slender young man said he's grateful a jury "saw through" the prosecution's attempts to prove he was negligent for something he doesn't even remember happening.

Raisbeck spent a month at University Hospital following the crash, including 17 days in a coma. He said Humphrey several times offered deals to get him to plead guilty, at one point offering a sentence of six months' probation and no jail time. Raisbeck refused.

Raisbeck said the ordeal left him and his parents, Darlene and Owen Raisbeck, bitter and disillusioned about the Dane County criminal-justice system.

"Look at all the money they wasted trying to prosecute Adam. It just makes you sick," said Owen Raisbeck, a driver's education teacher at Marshall High School who plays softball with Sommers.

MS. FALK: I believe this was asked and answered at the last deposition.
THE WITNESS: Yeah.
MR. SOMMERS: I think it's slightly different.
Q. But go ahead.
A. I'm sorry?
Q. This is information that the state should not have withheld from you?
A. And I think I may have made reference last time when you asked some similar question, that, you know, I note that it's a confidential personnel matter and I don't know what hurdles that presents for anybody in the process, but it would -- the answer would generally be yes.
Q. No. I think your -- right. I think that you agreed that the information -- that's potentially exculpatory, correct?
A. Yes.
Q. And that potentially exculpatory evidence is evidence that the state is obligated to provide to the defense?
A. I think so.
Q. Okay. And that would have been relevant in regards to our motion on Kevin McCoy?

A. Yes.
Q. Basically the state there would have been conceding what the defense alleged had happened to Kevin McCoy?
MS. FALK: Object to form.
MR. SOMMERS: Okay.
A. Yes.
Q. And they never did concede that while you were judge?
A. Not that I can recall.
Q. Okay. And you would agree, would you not, that if Kevin McCoy is a witness at trial, it affects the defendant's right of due process if it is suppressed that he was basically pressured or -- into making a statement?
A. Could you repeat that, please?
Q. You would agree, would you not, that the -- basically the treatment of Kevin McCoy would have been relevant to basically his testimony?
A. Well, yes.
Q. And you would agree, would you not, that if a, let's say, statement of Kevin McCoy was introduced against Adam Raisbeck, it would have been important for the defense then to be able to show the jury that the statement was possibly the

product -- strike that.
It would have been -- if Kevin McCoy -- if a statement of Kevin McCoy was introduced during the prosecution, it would have been relevant, would it not, for the defense to be able to show to the jury that the statement was a possible product of harassment?
A. Yes.
Q. And if this case would have gone to trial, the defense would not have been able to do that, would they?
A. I don't know how it would have developed.
Q. Well, you would agree, would you not, that if, let's say, that statement or the -- or the concessions of Brian Blanchard's letter has great impact on basically Kevin McCoy as a witness?
A. When you -- maybe I misunderstood. I thought you meant if it had gone to trial when it was scheduled before me.
Q. Right.
A. Now I'm not sure. What is your question?
Q. Well, you would agree, would you not, that the state -- that the information contained in Brian Blanchard's letter would have been relevant to the Adam Raisbeck trial?

A. It could have been, yes.
Q. Yes. And it could have -- and it could -- and basically is if Kevin McCoy's statement was introduced without the concession of Brian Blanchard's letter, that could have led, could it not, to Adam Raisbeck being wrongly convicted?
A. I don't know.
Q. It's a possibility, isn't it?
A. Possibilities? Yeah. I'll say it's a possibility.
Q. Yeah. In fact, wouldn't it have been -- and wouldn't I have the -- as defense attorney had a responsibility to try to basically counteract that possibility?
A. Yes.
Q. And couldn't I have just -- and couldn't that possibility just have been counteracted if you merely would have taken evidence in regards to -- to Kevin McCoy's treatment?
A. I don't know.
Q. Well, you were provided, were you not, with sworn affidavits from Kevin McCoy saying he was mistreated?
A. I don't recall.
Q. Well, I think we went through all this last time.

Wisconsin State Journal

SETTING IT STRAIGHT

Article reported wrong circumstances

An article on the front page July 8 incorrectly reported the circumstances surrounding a man who was prohibited from testifying in the Adam Raisbeck trial. Raisbeck's attorney, Joseph Sommers, wanted witness Kevin McCoy to testify that Dane County prosecutors were unduly pressuring him to testify against Raisbeck. Dane County Circuit Judge Daniel Moeser agreed with Deputy District Attorney Tim Verhoff in excluding McCoy after Verhoff stated prosecutors had no plans to call McCoy as a witness. The article incorrectly stated that Moeser's ruling was intended to punish the prosecution.

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

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

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

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

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,

Joseph L. Sommers
Attorney for Adam Raisbeck
State Bar #1020248
7 N. Pinckney Street, Suite 225B
P.O. Box 1105
Madison, WI 53701-1105
(608)280-8060

cc: Hon. David G. Deininger
Hon. Thomas R. Cane
Hon. Michael Nowakowski
Judy Coleman, Dane County Clerk of Circuit Court
Cornelia Clark, Supreme Court Clerk
ADA Paul Humphrey
DA Brian Blanchard
Adam Raisbeck

JOSEPH L. SOMMERS
ATTORNEY AT LAW

HAND-DELIVERED

September 14, 2007

AG John B. Van Hollen
Wisconsin Dept. of Justice
P.O. Box 7857
Madison, WI 53707

AUSA Erik C. Peterson
U.S. Attorney's Office
P.O. Box 1585
Madison, WI 53703-4703

Receipt of copy of the within acknowleged
this 14th day of September
20 07 Time 4:17
Attorney General of Wisconsin
By [signature]

RE: Criminal misconduct orchestrated by the Dane County District Attorney's Office

Dear Gentlemen:

Given the notoriety of the Dane County DA's Office's prosecution of Adam Raisbeck (Dane County Case No. 01 CF 2708), I am somewhat mystified by the apparent lack of interest from either of your offices. Certainly this impacts the public interest and the Rule of Law in Wisconsin. And certainly, this is something about which each of you has the legal authority and responsibility to act.

I realize that criminal misconduct on the part of a District Attorney's Office is an extremely serious allegation. I further realize that given its gravity, there can be little justification for either of your offices to look the other way, especially when you are provided with supporting documentation, as you are at this time.

You are being providing with ten factual assertions and the supporting documentation to each.[1] This document is slightly outdated in that it was put together roughly a month ago and there is now additional supporting evidence. If you review this document, I have little doubt that your opinion will be the same as others who have received this information, i.e. there is overwhelming evidence that: 1) the Dane County District Attorney's Office manufactured a

[1] Do not assume that these ten are the only instances of misconduct/ illegality. There are far more. Also, it would be mistaken to believe that this misconduct pertains only the Raisbeck prosecution.

OFFICE: 7 N. PINCKNEY STREET, SUITE 225-B, MADISON, WI 53703
MAIL: P.O. BOX 244, OREGON, WI 53575-0244 • PHONE: (608) 280-8060 • FAX: (608) 835-0507

case against Adam Raisbeck; and 2) they then committed further misconduct, even criminal, in their attempt to cover up for their actions.

As an experienced defense attorney, it is my professional opinion that obtaining felony convictions against Dane County ADA Paul Humphrey, Dane County Deputy Sheriff David Gnacinski, and accident reconstruction expert Robert Krenz would be extremely easy. In fact, as you will see, if you review these documents, Gnacinski's and Krenz's prior sworn testimony in itself would be sufficient for obtaining these convictions.

And while obtaining felony convictions against Dane County District Attorney Brian Blanchard would require a little more effort, it would still be relatively easy to accomplish. Other individuals that should be investigated and possibly charged would be ex-Dane County Deputy Sheriff Richard Sewell, Dane County Detective Janet Anderson Boehnen, Dane County DDA Judy Schwaemle and Dane County DDA Timothy Verhoff.

I have heard speculation that each of your offices is possibly waiting to act for the *Wisconsin State Journal* to print their investigative piece which has been in the works for some time. I have no way of knowing whether or not this is accurate. And while I anticipate that this piece will run in the relatively near future, I believe this should have little, if any, bearing on how either of your offices proceeds.

If either or your offices has taken the position that this is a matter best left to the Office of Lawyer Regulation (OLR), you should be advised that OLR has refused to act in regard to any attorney other than Paul Humphrey. And on Paul Humphrey, OLR has tabled the most serious allegations which are also the easiest to substantiate. And of course, some of the individuals involved in the criminal conduct are beyond the reach of OLR because they are not attorneys.

A response is respectfully requested. Please advise if there is any further information or documentation you wish for me to provide.

Sincerely,

Joseph L. Sommers

A. Yes.

Q. And what did you find out?

A. I found that his daughter was graduating and that he was in attendance with his young--I think young son.

Q. And did you find out what time he was in attendance?

A. It was from 10:30 to 11:45, I believe.

Q. And is there a police report?

A. I believe I just may have sent an e-mail to Mr. Asmus, but I can't be certain.

Q. Why wouldn't you do a report on that?

A. I don't know.

Q. You have witnesses that you talked to?

A. Teachers.

Q. And so these teachers, are they identified?

A. No. No, they're not. In fact, they didn't even work there anymore.

Q. So you're saying that you've done it in a way that the defense can't--won't be able to follow up on it?

A. No, sir. I can give you the phone numbers to try to contact these people. And I did what you asked. I confirmed that he was there. And I didn't follow it up any farther.

Q. Why didn't you make sure that that information was passed on to us?

A. I believe I passed it on to Mr. Asmus, but, again, I can't be sure. And I-- There was talking between you and I.

#55-a

record is clear, too, both detectives, Smith and Detective Sharpe, both told Evans originally you're guilty. You're guilty. They told him up and down you are guilty. We know it's you. It's identical. It's you. Everything is you. So that's also the context of this.

THE COURT: All right. Let me just turn for a second. Attorney Asmus, the ability of Evans to present an alibi under these circumstances and the ability for the defense to follow up on that, is that not exculpatory or potentially exculpatory?

ATTORNEY ASMUS: Well, I think Detective Sharpe testified that he corroborated Mr. Evans' alibi such that he wouldn't have been the one committing the robbery. So I guess I think that that's more inculpatory than exculpatory for the defendant.

ATTORNEY SOMMERS: But, Your Honor--

ATTORNEY ASMUS: I mean, if you're trying to say Mr. Evans is really the one who committed this robbery, not Mr. Thomas, the defendant, unless I misunderstood what Detective Sharpe was saying, he's saying he confirmed that Evans was at a school function from 10:30 to 11:45.

THE COURT: All right.

ATTORNEY ASMUS: So I guess that seems to me to be more inculpatory. It doesn't exculpate the defendant, because it suggests that Mr. Evans wasn't there, but.

#55-b

INCIDENT SUPPLEMENT DETAIL REPORT

Investigation

Agency : **SUN PRAIRIE**
Phone : **(608) 837-7336**
Address : **300 EAST MAIN STREET, SUN PRAIRIE WI 53590**

Incident # : **SP1000013737**
Supplement Num : **39**
Document Date : **12/8/11 12:07**
Last Update : **12/8/11 1:19 pm**

Officer : SHARPE, RANDALL

NARRATIVE

SP1000013737.39 **RANDALL SHARPE** **12-08-11**

IDENTIFICATION OF CONTACTS:

Tavs, Wendy, other (Principal), verbally identified
Miller, Aaliyah, other, verbally identified
Thompson, Colleen, other, verbally identified

INFORMATION:

During the course of this investigation, handwriting samples had been submitted to the Wisconsin State Crime Laboratory. During their analysis of evidence, they requested examples of similar writings in regard to the demand note for this case, SP10-13737.

On 04-28-11, I met Julian Thomas at the Dane County Jail, along with his attorney, Joseph Sommers. At this time I obtained the requested handwriting samples and prepared to leave the jail. While in the visitation area, Mr. Sommers expressed his belief of a conspiracy theory framing his client, Julian Thomas, for the crime. Sommers said that in the interest of justice, I should be checking other crimes committed by Evans in Middleton. I explained to Mr. Sommers that I believed that there were probably several outstanding cases for both Evans and Thomas, and that they were being investigated. Mr. Sommers asked about the graduation of Evans' daughter on the day of the robbery. He asked if what Evans told police had been confirmed. I told Mr. Sommers that I believe the story was confirmed, and that Evans had been stopped by officers on a traffic stop after he had been seen driving in the direction of the High School on Kroncke Dr., close to where the robbery occurred. I told Mr. Sommers that in the interest of justice, I may look into it.

Several days after my meeting with Thomas and Sommers, I did make a telephone call to the Sun Prairie High School to determine whether or not Evans' daughter, Aaliyah Miller, had attended summer school classes and graduated on 07-12-10. I did not identify the officer personnel whom I was in contact with, however, I was informed that Aaliyah Miller did attend summer school, and that her last day of summer school was 07-12-10. I had eye witness testimony other than Michael Evans that Julian Thomas had committed this crime, and I did not believe it necessary to create a supplemental report in regard to the summer school, as I believed it was already covered in the original report by other officers.

On 11-18-11, I contacted Principal Wendy Tavs of the Prairie Phoenix Academy, where Aaliyah Miller would've attended summer school in July of 2010. Ms. Tavs generated a student period attendance detail, with a day summary. Ms. Tavs brought my attention to the date 07-13-10 and a description beneath, which indicates personal comments-finished course work. Tavs explained to me that this meant that Aaliyah Miller had fulfilled her summer school obligation, with July 12th being her last day, as she had finished her course work. Tavs was also able to tell me that summer school classes occurred between the hours of 8 a.m. and 10:45 a.m., and from 10:45 a.m. until 1 p.m. Tavs was also able to tell me that the teacher assigned to Miller's algebra class was Colleen Thompson. I made personal contact with Colleen Thompson, who told me that

Agency : SUN PRAIRIE
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although she does not have records, she recalls Miller attending summer school and that she had finished the curriculum early and that 07-12-10 would've been her last day. Thompson did not have any knowledge of who picked Miller up. I made contact with Aaliyah Miller at the Sun Prairie High School. I asked Aaliyah if she could recall the last day of summer school that she attended in the summer of 2010. Aaliyah said that she did vaguely remember that. I asked her if there was anything special about that day, and she said that she could not recall. I asked her if she recalled being in a vehicle that was stopped by police, and she said that she did remember that. I asked her if she could tell me about that, and she said that her father had picked her up at summer school and that as they were returning home, the police stopped them. I asked her if she could recall what time of day that was, and she said that she was not certain, but that she had finished her class work early and was not required to stay for the entire afternoon, which would normally have ended at approximately 1 p.m.

I made telephone contact with Attorney Mark Lawton to inquire whether or not he was still representing Michael Evans in any capacity. Mr. Lawton told me that he was not representing Evans any longer.

Evans is currently being held at the Ferris Center, a jail facility where inmates are allowed to leave the premises and look for employment. I made telephone contact with Evans at the Ferris Center and asked if he could meet me for a brief interview. Evans told me that it would be okay for me to respond to the Ferris Center to speak with him. I did not tell Evans what the meeting was about until I arrived. On 12-01-11, I responded to the Ferris Center in Madison, Wisconsin. I met with Michael Evans and told him that I would like to recount the morning of July 12, 2010, the day of the second robbery. At this time, Evans is still a witness in this case, and I did not record the interview nor did I read Evans his Miranda Warning. I told Evans that I was confused about the graduation that he had mentioned for his daughter during summer school. Evans told me that there wasn't actually a graduation and that she had completed her work early and did not have to attend summer school for the rest of the session. I reminded him that he had told me he had gone to the High School with his daughter, and he said that this was correct. Evans said that he did take his daughter to the High School after picking her up at the Prairie Phoenix Academy, so that she could clean out her locker. Evans said that when she emptied out her locker, she came back to the car and he drove home. On his way home, he noticed all the police near Prairie Glass on Kroncke Dr. Evans said that shortly after that, he was stopped by other officers for driving without a license and having a cracked windshield. Once again, Evans could not give me an exact time, however, he did say that it was shortly after he passed officers at Prairie Glass.

The Student Period Attendance Detail provided to me by Principal Tavs is attached to this report.

Det. Randall K. Sharpe/pk

Copy forwarded to Court Officer for the D.A.'s Office, Attn: ADA Brian Asmus and entered into D.A. Log on 12-08-11.(pk)

g Photo

Lulu ComeSecondto'none Conley
it took them all to long to pose so i just started takin pics— with Lo Mf Gotti and michael blake (my hubby).
Share · December 8, 2010

Yaphet Williams Thats my nigga Ashtin,
January 18, 2011 at 8:31pm

Lulu ComeSecondto'none Conley yea probably its a bunch of niggas i jus took the pic lol
January 18, 2011 at 8:53pm

Album : Photos of Lo Mf Gotti in a day at the folks crib
Shared with: Custom

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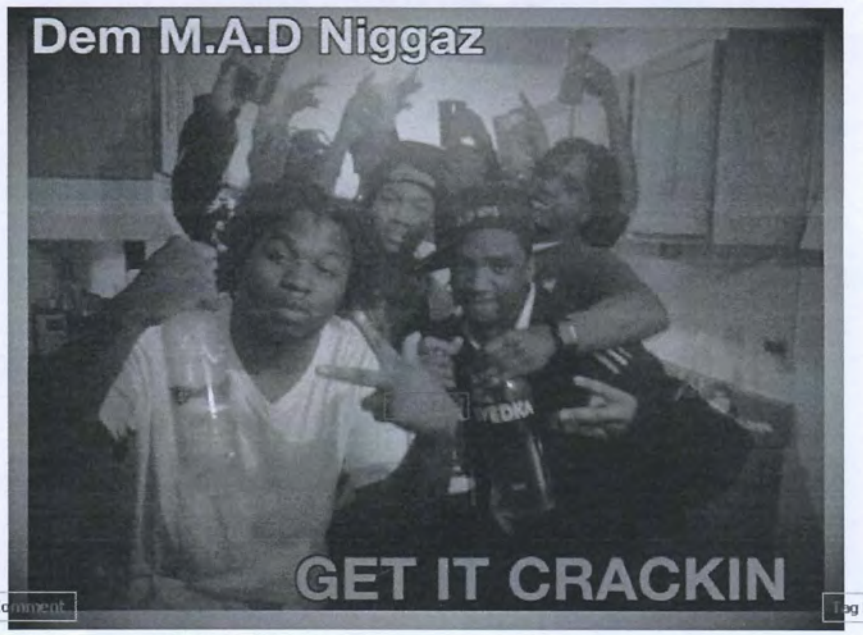

Like Comment Tag Photo

Ladyce Loving Nae'Ari with Boo'c Sendoff Hood, Shay LuckyLibra Patterson, Yung Bizz, Lo Mf Gotti, Freakey Lo Montana, Ace Boog, Eric TrainedtogoShawty Harrison, Fitted Tiger-shark Howard and Bre Patterson.
Like · Comment · Share · March 21, 2011

6 people like this.

Yung Bizz U kn my nigga m .a.d what it is ya dig
March 21, 2011 at 9:36am · Like · 1

Dante Alexander M.A.D SHARK GANG !
March 21, 2011 at 9:56am · Like

Freakey Lo Montana yu kno!!!!
March 21, 2011 at 10:15am · Like

Dontrell Allen NIGGAS GOT ME FUCK UP WHERE TRELL AT LOL V-BLOCK NIGGA MAD
March 21, 2011 at 3:08pm · Like

Ladyce Loving Nae'Ari Lol .
March 21, 2011 at 3:34pm · Like

Loyola Bank Head Mays da night stright crackn
March 21, 2011 at 8:13pm · Like

Freakey Lo Montana Yessirz
March 21, 2011 at 8:14pm · Like

Loyola Bank Head Mays we waz hot ass hell freakey lo about ready to die
March 21, 2011 at 8:16pm · Like

Freakey Lo Montana Hell yea man I was sweatin midgets n dat bitch
March 21, 2011 at 8:17pm · Like

Loyola Bank Head Mays hell yah
March 21, 2011 at 8:19pm · Like

Freakey Lo Montana Tat party saturday
March 21, 2011 at 8:20pm · Like

Loyola Bank Head Mays inbox me da info u goiin
March 21, 2011 at 8:23pm · Like

Freakey Lo Montana Yea I jus gt anotha tat
March 21, 2011 at 8:23pm · Like

Ladyce Loving Nae'Ari Who Party Is It ? && We Crackd Diz Night Onna Real
March 21, 2011 at 8:25pm · Like

Freakey Lo Montana My mans
March 21, 2011 at 8:34pm · Like

Ladyce Loving Nae'Ari Okay Wats His Name
March 21, 2011 at 8:36pm · Like

Freakey Lo Montana Equann

Album : Photos of Lo Mf Gotti in Mobile Uploads
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Unique Barry likes Myxer.

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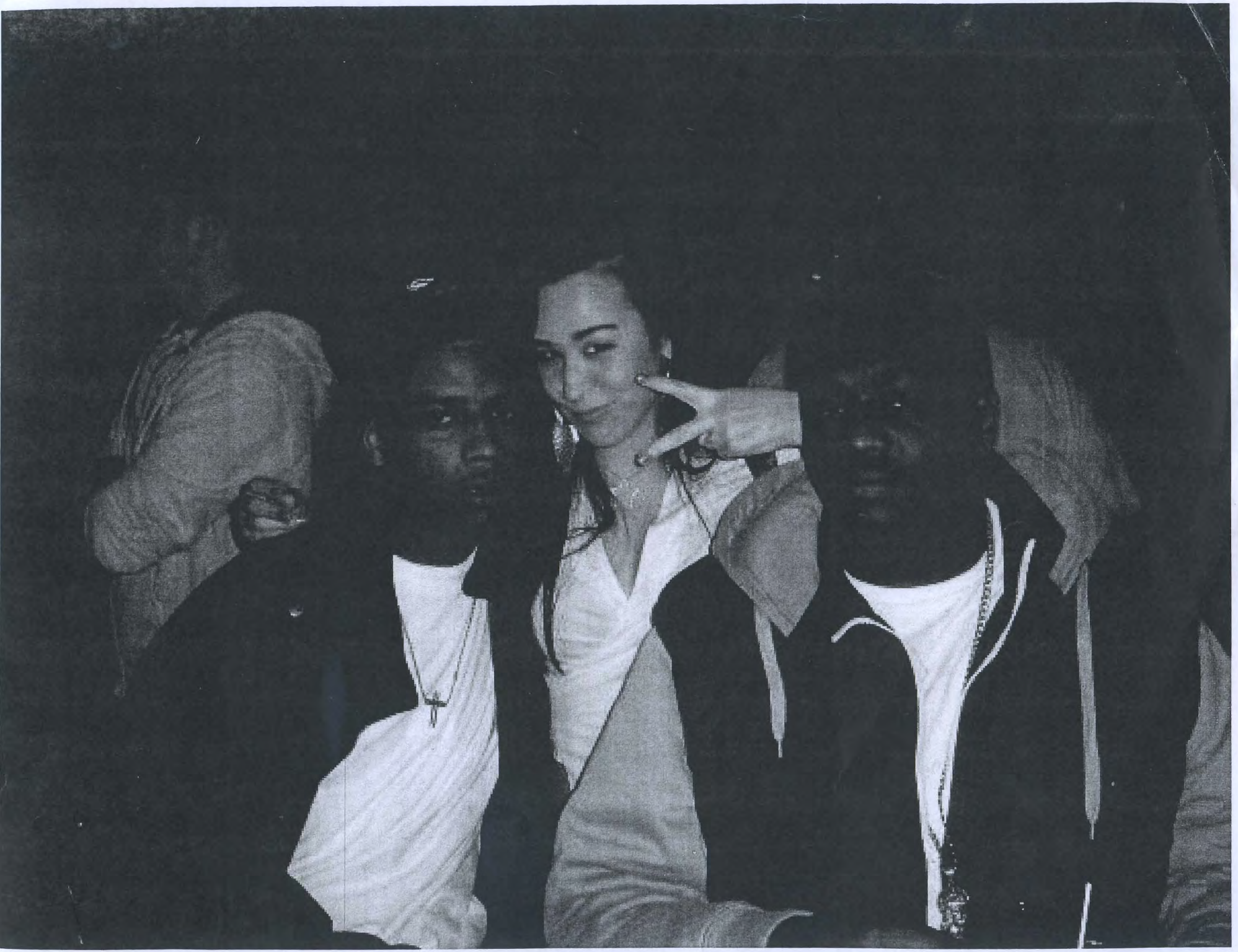

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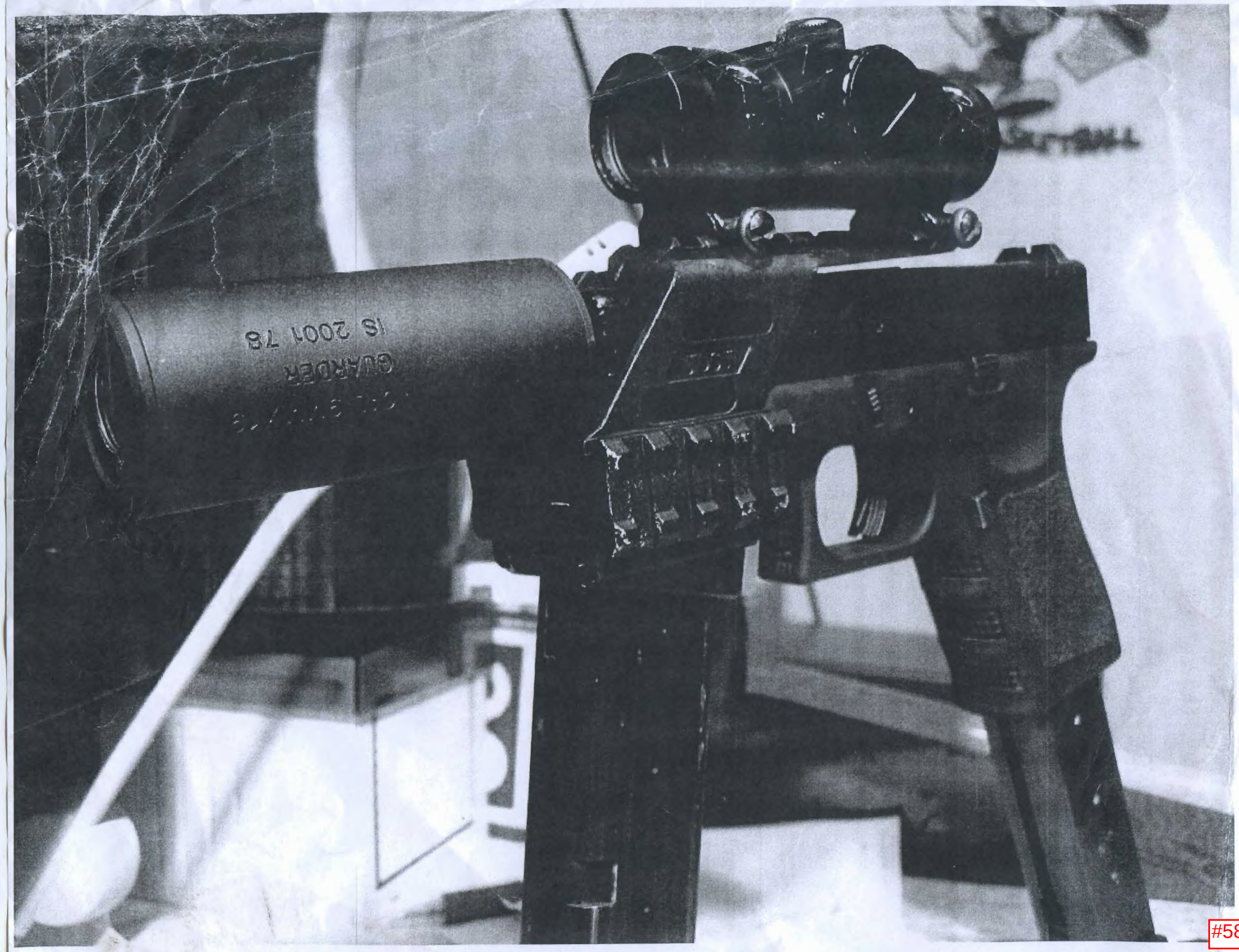


#58-c

#59-a

#59-b

#59-c

DANE COUNTY
DISTRICT ATTORNEY
ISMAEL R. OZANNE

ISMAEL R. OZANNE
District Attorney

MICHELLE L. VISTE
Deputy District Attorney
Felony Unit

CHRIS E. FREEMAN
Deputy District Attorney
Misdemeanor & Traffic Unit

MICHAEL S. WALSH
Deputy District Attorney
Juvenile Unit

SUZANNE BEAUDOIN
Director
Victim Witness Unit

PATRICIA HRUBESKY
Director
Deferred Prosecution Unit

KATHY MCDERMOTT
Administrative Services
Supervisor

May 19, 2011

Atty Dennis E Burke
State Public Defenders Office
17 S. Fairchild St.
Madison, WI 53703-3204

COPY

RE: State of Wisconsin v. Darell L Fowler,;
Court Case No. 2011CF000388

Dear Attorney Burke:

I am writing this letter to formally memorialize any consideration as well as the limits thereof given to your client for truthful testimony against co-defendant, Demarious Gray in case 2011CF390.

First, as a condition of receiving consideration, should he be called your client must offer truthful testimony in response to both questions from the State as well as defendant Gray's Attorney. Also, he is not to commit any new law violations nor have any failures to appear in court.

If your client abides by those conditions, the state would file an amended information charging him with the following crimes:

1. Party to a Crime, Theft by Use of Dangerous Weapons, contrary to secs. 943.20(1)(a), 939.05 and 939.63(1) of Wisconsin Statutes. This is punishable upon conviction by up to 15 months imprisonment and/or a $10,000.

2. Party to a Crime, Criminal Trespass to Dwelling, contrary to secs. 943.14 and 939.05 of the Wisconsin Statutes . This is punishable upon conviction by up to 9 months in jail and/or up to a $10,000 fine.

3. Disorderly Conduct, contrary to sec. 947.01 of the Wisconsin Statutes. This is punishable upon conviction by up to 90 days in jail and/or a $1,000 fine.

He will enter pleas of guilty or no contest to the amended charges.

Please note that your client is facing up to 27 months imprisonment and/or a $21,000 fine in this case. There has been no consideration made in terms of what the ultimate sentence is in this case, meaning your client may still be facing up to the maximum penalties on the amended misdemeanor offenses.

Sincerely,

Corey C. Stephan
Assistant District Attorney

#60-b

MADISON POLICE DEPARTMENT

Date of Report:	11/19/2008	**Case No:**	2008-334836 Field
		Ref. No:	
Occurred Incident:	65 - Check Person	**Sec/Area:**	403 CENTRAL
Dispatched as:	65 - Check Person	**Grid:**	STATELANGD
Case Offense:	CHECK PERSON		
Addr of Occurrence:	N Carroll St		
Call Date/Time:	11/13/2008 16:32	**From Date/Time:**	
Dispatch Date/Time:	11/13/2008 16:32	**Thru Date/Time:**	
Reporting Officer:	PO RENE GONZALEZ 2706		
Special Routing:			

CONTACT DARRELL L FOWLER
M/B DOB: 09/25/89 (19 yrs) Height: 6.00 Weight: 140
HairColor: BLK EyeColor: BRO
520 N CARROLL ST 307 MADISON WI, C: 608-512-6086

SUSP VEH: 1996 Lexus ES300 (AUTO 1996) Lic Num: 665NVR-Wisconsin GRAY/SMOKE 4 Door

NARRATIVE:

On listed date and time I was on routine in patrol in my assignment as the Langdon St. Neighborhood officer. I was in the dead end, 600 block of N. Carroll St. I observed a m/b walking (e/b) towards my direction. He was in the parking lot of 108 Langdon St. A recent armed robbery occurred there. When the subject saw my marked car he turned south and walked towards Langdon St. I waited a minute or 2 then also drove up to the integration of Carroll and Langdon St. I observed the subject walking e/b on the south side of the 100 block of Langdon St.

I made contact with the subject at the S/W corner of the intersection. I asked him for i.d. and he gave me a WI i.d. identifying him as Darrell Fowler. I have dealt with Fowler in the past and know that he has a weapons offense and was recently involved in an armed robbery over drugs. I know Fowler lives at 620 N. Carroll St. in apt #307. I asked him why he immediately turned way from me when he saw me and told him I knew he was almost at the corner of his residence. Fowler told me he was coming to meet a friend and pointed to a car that was taking off. The car was stopped on N. Carroll St. at Langdon facing s/b. The car took off when I made contact with Fowler. Fowler even acknowledged, "he's leaving because you stopped me." I asked Fowler who it was he mumbled a name.

I observed Fowler was wearing a black Chicago White sox logo "SOX" written in white letters. He had a black, fleece Northface coat on, a blk belt with a large silver/chrome buckle, blue jeans with rubber banded ankles, black Nike high-tops, with a 1", white, rimmed sole.

Because of Fowler's weapons and gun history, and belief that I might have been intercepted a potential drug deal with the vehicle that took off, I did perform a pat-down of Fowler. I did not feel any objects that would be contraband.

Fowler was informed that I normally patrol the area and was given my business card, then released.

NFA

dlf

LS-181

#61

DAVIS, ASHTON PIERRE

Q. And so therefore the hair is not relevant, correct?
A. It would be for the lineup.
Q. Well, why would the hair -- If they can't see his hair, why then is the hair relevant?
A. Because he would have been very different in the photo lineup if I would have had Demarious Gray in there as well as Ashton Davis in there, the hair would have been very different and very distinctive.
Q. If the -- If both individuals say we can't see his hair, why is it relevant for them to be able to see the hair during a photo lineup?
A. I was preparing a lineup that included Demarious Gray and not Ashton Davis. I simply went with similar characteristic of Demarious Gray and not Ashton Davis.
Q. So when -- So you were specifically making a point not to show them Ashton Davis?
A. No. I was creating a lineup that included Demarious Gray. I had no -- I had no knowledge of Ashton Davis at the time nor did I make any relevant reason why I didn't put him in the lineup at all. The lineup was specifically set up for Demarious Gray.
Q. So you're saying that at the time that you did the photo lineup in this case, you had no knowledge of Ashton Davis?
A. I had no knowledge of Ashton Davis.

#63-a

Q. So you're saying that your prior testimony when you said at the time I was told Ashton Davis was out of town, you're saying that that testimony is not true?

A. That was later. I don't understand -- The context of your questioning at the time I don't remember what -- why we were talking about Atlanta, Georgia. I know at the time of the lineup that all I knew was Demarious Gray's name. I did not know Ashton Davis' name.

Q. You do know that at the time the Judge asked you in this court specifically to why you didn't include Ashton Davis in the lineup, and you are aware that in your answer -- part of your answer was saying at the time I was told he was out of town?

A. I was told he was --

Q. You did answer that, that's true, correct?

A. I was told he was out of town, but I also did not know his name. You're asking me why he was not included in the lineup. At the time I did not know who Ashton Davis was. But if you're asking me why I just wouldn't have put him in there, my understanding was he had the long hair, and my understanding also was at one point that he may have been in Atlanta, Georgia, which is unsubstantiated information that I simply heard and I can't tell you where.

Q. First, Detective, the only possible way you would have

#63-b

factors that we were dealing with. We also had the name of LC and Little C that was out there. And that was another name we were using for identification that we were looking towards. And his name was listed in our police data. We were just looking around for other physical characteristics. The mole was only one of them.

The reason why we did not pick Ashton Davis was because he had long dreadlocks at the time. Which was totally -- there was no description of that whatsoever. And that's when the two would have been very, very different. At the time I was also told that Ashton Davis wasn't even in town at the time. And then after the fact when we wanted to interview him, my understanding was -- and I don't know where I got this -- but I was told he was in Atlanta, Georgia. That he had left and went to Atlanta, Georgia. I had no idea where Ashton Davis was or who he was at the time. And then, I realized, yes, of course, I want to speak with Ashton Davis to get his side of the story. I checked in the system and I found out that he was in jail. So I immediately, as soon as I found out that he was in jail, I went up to the jail to interview Ashton Davis. And that's when he told me that he was in Des Moines, Iowa, at the time of the robbery.

THE COURT: Okay.

MR. SOMMERS: Your Honor, he just said --

× madison.com

Armed men take cash, cell phones in east-side home invasion, police say

BILL NOVAK | The Capital Times | bnovak@madison.com | Posted: Tuesday, February 8, 2011 9:20 am

Four armed men pushed they way into an east-side residence Friday night and took cell phones and cash from the residents before fleeing, Madison police reported.

The robbery was reported at 7 p.m. Friday at 1818 Fordem Ave., police said.

No injuries were reported.

According to police, the 21-year-old female resident had two friends visiting when she answered the door.

"Four suspects pushed their way in, displayed firearms and demanded valuables," said Sgt. Karen Krahn.

The first suspect was described as a black male, 19 to 21 years old, 5 feet 4 inches tall and 140 to 150 pounds, wearing a black skull cap, gray hooded sweatshirt, black jeans and black boots.

The second suspect was described as a black male, 18 to 21 years old, 6-1 to 6-2 with a medium build, wearing a dark doo rag, black hooded sweatshirt, black puffy vest and a dark blue bandana over his face at the time of the robbery.

The third suspect was described as a black male, 18 to 21 years old, 5-9 with a medium build, dreadlocks, wearing a black hooded sweatshirt, black vest, dark jeans and dark shoes.

The fourth suspect was described as a black male, 18 to 21 years old, 5-8 to 5-9 and 190 to 200 pounds, wearing a green hooded sweatshirt and dark puffy vest.

× madison.com

One of 2 suspects in armed robbery arrested

State Journal | Posted: Thursday, March 8, 2012 3:50 pm

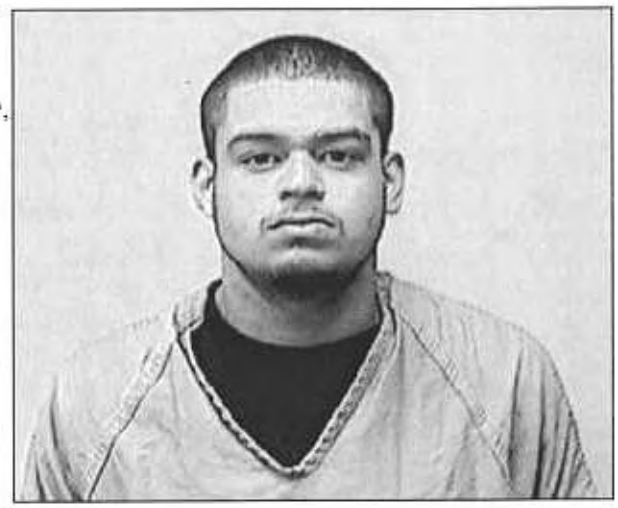
Police have arrested one of two men being sought in connection with an armed robbery that occurred in February.

Ebher E. Ruiz, 20, of Madison was taken into custody on Thursday, said Madison police spokesman Joel DeSpain.

The other man, 20-year-old Derrick D. Shelton, remains at large, DeSpain said.

Ruiz and Shelton have been charged with the Feb. 20 armed robbery of a woman in a home on O'Brien Court on the Far East Side.

A third man charged in the robbery, Evander Bass, 20, of Sun Prairie, is free on bail.



STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Plaintiff

v. Case No. 11 CF 390

DEMARIOUS GRAY,

Defendant

NOTICE OF PROPOSED EVIDENCE TO BE SUBMITTED, PURSUANT TO §904.04(2), STATS.

The defendant Demarious Gray, through his attorney Joseph L. Sommers, pursuant to §904.04(2), Stats. and Whitty v. State, 34 Wis.2d 278.149 N.W.2d 557 (1967) hereby gives notice that he intends to introduce evidence at trial showing:

1. That Ashton Davis committed the crime for which Demarious Gray has been charged.

2. That Ashton Davis and Darell Fowler are members of the `lic squad' that commits armed robberies and home invasions in the Madison area.

3. One home invasion committed by the `lic Squad' was on February 4, 2011 at 1818 Fordem Avenue, Apartment 26.

4. The `lic squad' stashed their guns and fruits of their crimes at 802 Vera Court, Madison, WI.

5. Madison police, especially Det. Thomas Helgren, have taken a systematic course of conduct in order to obscure the criminality and `lic squad' status of both Davis and Fowler.

The due process rights of a criminal defendant are in essence, the right to a fair opportunity to defend against the state's accusations. State v. Evans, 187 Wis.2d 66, 82, 522

× madison.com

Police say fatal shooting on North Side may be gang-related

ED TRELEVEN | etreleven@madison.com | 608-252-6134 | Posted: Friday, October 21, 2011 8:30 pm

For the past decade or so, after a tumultuous period in the early 1990s, the Vera Court neighborhood hasn't seen much violent crime.

That changed Thursday night when a 20-year-old man was shot to death in what police said Friday might be a gang-related incident.

Madison Police Department spokesman Joel DeSpain said detectives are trying to piece together events surrounding the shooting. He said police were called to the 800 block of Vera Court shortly after 10 p.m. following a report of shots fired.

A car containing the dead 20-year-old man, who apparently was driving, was found on the south side of the 800 block of Troy Drive, DeSpain said.

He said investigators don't yet know whether the man was shot before or after he got in the car.

On Friday, investigators were combing through an apartment building at 802 Vera Court, but police did not say if the building was linked to the shooting.

A second man who was grazed by a gunshot was found in the area by police, DeSpain said. He did not require medical attention.

DeSpain said there doesn't appear to be any connection between the shooting death and another shooting that happened Monday at 3713 E. Karstens Drive, about a block from Vera Court.

In that incident, according to a search warrant filed in court Wednesday, a man was shot in the shoulder in the hallway of an apartment building by a Stoughton man who came to buy marijuana from him.

Police stopped short of saying the Vera Court shooting was gang-related.

"We know that some of the folks here are gang-affiliated," DeSpain said. "We don't know specifically if this is a gang crime. We don't know if this case is about that or not."

The shooting hasn't fazed neighborhood resident Chris Jones, a UW-Madison graduate student who lives on Camino del Sol, just around the corner from where the dead man was found.

He heard the shots Thursday night as he studied for an exam and thought they were firecrackers.

"It certainly rattles you to think that someone was murdered," Jones said. But even though he wouldn't have walked alone at night in the neighborhood before, his overall impression of the neighborhood as being pretty safe hasn't changed.

"I've never felt unsafe in my neighborhood," he said.

The homicide worries District 18 Ald. Anita Weier, who with her husband volunteers as a Reading Buddy at the Vera Court Neighborhood Center.

Long before she was elected to the City Council, she said, Vera Court changed for the better thanks to an effort to improve housing and curb crime that was more prevalent in the neighborhood during the early 1990s.

"Things have been going very well for the last several years," Weier said.

"So it's a concern if crime is starting to happen."

For Tom Solyst, director of the neighborhood center for the past 11 years, the immediate concern was figuring out how to help area children who don't understand what happened.

Many children probably know the victim or his family, Solyst said, and rumors about the shooting are flying around the neighborhood.

The center planned to bring in social workers from the children's schools to help address any questions they have about the situation during the after-school program and assure them they are safe.

"We'll have to see what happens after this because it's a big shock to the neighborhood," Solyst said.

JOSEPH L. SOMMERS
ATTORNEY AT LAW

HAND-DELIVERED

October 3, 2011

Anthony A. Williams
Dane County Jail
115 W. Doty Street
Madison, WI 53703

RE: Representation on Dane County Case No. 11 CF 1687

Dear Mr. Williams:

AW This letter is to memorialize our conversations of the past weekend. First, you have personally requested that I represent you by accepting an SPD appointment to be your attorney. The basis of your request is due to what you heard from others on the street and in the Dane County Jail of my abilities as an attorney and of my willingness to push where other attorneys would not.

AW We have discussed in detail the facts of your case. I have informed you that, from what you have told me, the best case scenario is felony murder. I have told you that, although I have confidence in my abilities, that given the facts, I do not have a magic wand, and that the facts even as outlined by you result in a best case scenario of felony murder.

AW We have discussed that, given that you are the only person who has been charged with first degree intentional homicide, that it is very likely, if not completely probable, that Zach Mays has already provided a witness statement implicating you. You have informed me that you would be willing to provide complete information on criminality that you are aware of in the Madison area, especially if this would facilitate your conviction being for felony murder rather than first degree intentional homicide.

AW You have informed me of a number of criminal activities of which you are aware and which involved `MAD' (Mad About Dollars). You have also informed me of criminal activities you are aware of involving the `lic squad,' to which MAD is in close association.

AW You have specifically informed me of facts pertaining to criminal activities orchestrated by both Ashton Davis and Darell Fowler, one example being Fowler's recruiting of you in regard to the beating and attempted robbery incident at Rhythm and Booms. We have also discussed other serious criminal activities involving Mr. Davis and Mr. Fowler.

OFFICE: 7 N. PINCKNEY STREET, SUITE 225-B, MADISON, WI 53703
MAIL: P.O. BOX 244, OREGON, WI 53575-0244 • PHONE: (608) 280-8060 • FAX: (608) 835-0507

#69-a

AW You are aware that I represent Demarious Gray and that it is my belief that Mr. Gray is being railroaded for the benefit of Davis and Fowler, and that Davis and Fowler are protected by the Madison Police. You have informed me that it is your belief, based on your personal observances and conversations, that these individuals are protected by dirty cops. You are aware that if I am representing you, my efforts to expose dirty cops protecting criminals will not cease. You are aware that this is my priority, as is my prior current representation of Demarious Gray.

AW The above facts are what you must consider when deciding if you want me to represent you on Dane County Case No. 11 CF 1687 on the charges of attempted and completed first degree intentional homicide.

Sincerely,

Joseph L. Sommers

I, Anthony Williams, have read the above letter, and agree with its contents. I have decided that I have checked the option below which I desire. I make this decision freely, intelligently and voluntarily:

X I want Joseph L. Sommers to represent me on Dane County Case No. 11 CF 1687.

_____ I do not want Joseph L. Sommers to represent me on Dane County Case No. 11 CF 1687.

Anthony W. Williams — Oct 3, 2011 — 09/01/92

Anthony A. Williams — DATE — DOB

Dec 5, 2011

This is for my Atty Joe Somers
I give him Permisson to give Dis to
the Court I am Willing to give a complete
Statement on the Crime that I have
been charged and all others Crime that
I know of this includes Feb 4 2011
home invasion that occurred at
1818 Forden ave Ashton Davis organized
this Crime and [redacted] took part in it
Shortly after the Crime within a month
or so Madison Detectives talk with
me about the Feb 4 2011 home invasion
this [redacted] took place at my house. They
brought up Ashton Davis. I also know
talk with both mother and with
Zach mays

Anthony Williams

Anthony Williams

#70

DANE COUNTY DISTRICT ATTORNEY
ISMAEL R. OZANNE

ISMAEL R. OZANNE
District Attorney

MICHELLE L. VISTE
Deputy District Attorney
Felony Unit

CHRIS E. FREEMAN
Deputy District Attorney
Misdemeanor & Traffic Unit

MICHAEL S. WALSH
Deputy District Attorney
Juvenile Unit

SUZANNE BEAUDOIN
Director
Victim Witness Unit

PATRICIA HRUBESKY
Director
Deferred Prosecution Unit

KATHY MCDERMOTT
Administrative Services
Supervisor

October 27, 2011

Honorable Julie Genovese
Dane County Circuit Court Branch 13

RE: State of Wisconsin v. Demarious L Gray; Court Case No. 2011CF000390

Dear Judge Genovese:

I have been advised by Officer Rene Gonzalez of the following regarding his report dated November 19, 2008 in MAPD case 2008-334836. Officer Gonzalez remembers who Darell Fowler is, but does not remember his source of information regarding the weapons and robbery. Officer Gonzalez's belief is that the information was intelligence only (i.e., not verifiable) and therefore there is no further documentation of the information. At the time Officer Gonzalez was a neighborhood officer in the Langdon Street area and he regularly got unsubstantiated intelligence information.

Sincerely,

Corey C. Stephan
Assistant District Attorney

C: Attorney Joseph Sommers (via fax and US mail)

STATE JOURNAL EXCLUSIVE | UNSOLVED ZIMMERMANN HOMICIDE

Police look at link to burglary in Zimmermann homicide

SANDY CULLEN and ED TRELEVEN | scullen@madison.com and etreleven@madison.com | Posted: Monday, December 13, 2010 11:00 am

Madison police believe there may be a connection between the unsolved homicide of UW-Madison student Brittany Zimmermann and an early morning break-in at a University Avenue tavern months later involving three Madison teenagers with gang ties, the State Journal has learned.

Assistant City Attorney Roger Allen confirmed there is a "possible connection" between Zimmermann's April 2, 2008, strangulation and stabbing death in her Downtown apartment and the July 9, 2008, break-in at the Blue Moon Bar and Grill, 2535 University Ave.

Police won't say why they think the crimes are linked, and there's no evidence in the available record that any of the teens involved in the Blue Moon break-in were involved in Zimmermann's killing. But a State Journal review of hundreds of pages of police and court records suggests an unknown accomplice to the burglary may have been at the homicide.

The newspaper began its review after the parent of another teen questioned by police in connection with the Zimmermann case told the Wisconsin State Journal that a detective told her DNA associated with the homicide matched DNA from another crime at a local bar. The parent, whose son knows one of the Blue Moon burglars, requested anonymity out of concern for her family's safety.

Police wouldn't confirm the parent's account, or say whether they've matched DNA from the Zimmermann case to any other crimes. Nor would they say if the Zimmermann investigation is focusing on Madison teenagers with gang associations.

The detective who spoke with the parent, David Miller, along with the two other detectives working on the Zimmermann case, Gregg Luedtke and Greg Esser, declined to be interviewed and referred questions to Central District Capt. Mary Schauf.

Schauf said the department "will not discuss any evidence" or "any working theory ... or any persons of interest."

But, in an acknowledgement that the two crimes may be connected, she said records of the Blue Moon break-in, which the State Journal has requested under the state's open records law, were being reviewed first to remove information involving the ongoing Zimmermann case.

Zimmermann was killed after returning from an exam at about 12:30 p.m., after someone forced open the outside door to her apartment building at 517 W. Doty St., said police. They have released few other details about the death of the 21-year-old student from Marshfield.

The Zimmermann investigation was hampered from the start after a call taker at the Dane County 911 Center mishandled a call from Zimmermann's cell phone around the time she was killed. The call taker said she didn't hear a woman scream or sounds of a struggle —which police later said were captured on the recording of the call — and police weren't sent to the scene until Zimmermann's fiance found her body 48 minutes later.

In a second failure the same day, dispatch center personnel misread their recording system and sent police after a false lead for two weeks.

A fingerprint, then DNA

Three months after the Zimmermann homicide, on July 9, 2008, burglars attempted to enter the Blue Moon through a Plexiglas window but failed, according to police and court records. A nearby door was pried open, and a large-screen TV was moved but wasn't taken because it was connected to the ceiling.

A fingerprint found on the window was matched to Spencer L. Hutchins, now 20, who, along with Darrielle L. Banks and Ryan K. Cook, both now 19, admitted involvement in the burglary. The three also admitted to burglarizing three other nearby businesses the same night.

On Sept. 19, 2008, the state Crime Laboratory notified police that a swab of the Blue Moon window turned up DNA. The DNA didn't match any of the three teens — or anyone in a national database, court records show.

That same day, Miller and Luedtke contacted the other three businesses the teens had burglarized — the Sushi Box, San San's Day Spa and a local union office, all located at 2433 University Ave. —seeking additional evidence, police records show.

In an effort to find the identity of the possible fourth burglar, police also obtained DNA samples from at least three other teenagers and one man in his early 20s who were implicated in the Blue Moon break-in by Banks, according to search warrant filings. None of those four, nor a fifth person also said to have been involved in the burglary, has been charged.

Burglar feared for his life

While Hutchins admitted his involvement in the Blue Moon break-in to police in September 2008, Assistant District Attorney Mary Ellen Karst said Hutchins "obstructed the investigation regarding his co-actors," according to a transcript of his Oct. 14, 2009, re-sentencing hearing. Records show that at an Oct. 1, 2008, court appearance, Hutchins denied that a fourth person was involved in the break-in.

According to the re-sentencing hearing transcript, Hutchins' attorney, Kate Findley, told the judge that prosecutors were "offering consideration if Mr. Hutchins was willing to testify in other matters, which he was not. It basically would have put his life in danger. He was not willing to take that."

The transcript does not elaborate on what matters prosecutors had sought Hutchins' cooperation, and Madison police would not say if it concerned the Zimmermann case. Karst declined comment. Findley did not respond to repeated messages for comment.

Through a Department of Corrections spokesman, Hutchins, Banks and Cook declined to be interviewed for this story.

Investigations ongoing

In response to the State Journal's records request, police released 40 pages of records from their investigations of the break-ins at the three other businesses targeted the night of the Blue Moon incident. Along with the Blue Moon burglary, all remain open investigations.

Police also released the first 54 pages in the Blue Moon investigation, while about 600 more pages are being reviewed for information relating to the Zimmermann homicide or other open investigations, said Capt. Carl Gloede, the department's records custodian.

The records show that Miller and Luedtke interviewed Hutchins for about four hours on Sept. 26, 2008. During the interview, Hutchins said he had taken the drug Ecstasy on at least three occasions and described it as a "mood swing" type of drug that "makes you do things that you thought you would never do."

Hutchins, who eventually named Cook and Banks as participants in the Blue Moon break-in, repeatedly told detectives that he had never been a snitch and he did not want to identify his friends and be labeled as a snitch.

Criminal records, gang ties

Hutchins, Banks and Cook all have criminal histories, including numerous break-ins, and have known or alleged gang ties, according to police and court records.

On Dec. 27, 2007, Cook was arrested with Kendrick Briggs for operating a vehicle without the owner's consent, court records show. Briggs, 17, a member of the Cuddy Mac Boys street gang, was later convicted of first-degree reckless homicide in the June 9, 2009, gang-related shooting death of 17-year-old Karamee Collins on Madison's Southwest Side.

According to court records, Madison police were conducting surveillance of Cook's residence the night Collins was killed. Cook, Hutchins and another teen were arrested that same night as they returned from burglarizing several businesses in Cambridge with stolen televisions and a safe.

Dane County Sheriff's records identify Hutchins as a relative of Collins, and Madison police records identify him as a member of the Dipset street gang.

And court records state that Banks — whom Assistant District Attorney Shelly Rusch described as "a single-man crime spree from the age of 12 until the age of 18" — also is an alleged gang member.

At the time of the Blue Moon break-in, Banks was on electronic monitoring after convictions for possessing a firearm as a juvenile delinquent and bail jumping, the records show. Four days before the burglary, Banks cut off his monitoring bracelet and ran off. He was arrested July 12, 2008, after giving a false name while driving a vehicle and was later convicted of escape.

Eight days after the Blue Moon break-in, on July 17, 2008, Hutchins was arrested in North Carolina with two other teens in one of two rental cars they stole days earlier in Middleton, Madison police and court records state. Records show there were two guns in the car.

Hutchins is serving a prison sentence for the Blue Moon and other burglaries. He is scheduled to be released from the Racine Youthful Offender Correctional Institution on Jan. 24 but faces a charge of second-degree sexual assault of a child in Dane County. According to a criminal complaint, in June 2009 Hutchins had sex with a 15-year-old girl who became pregnant and had a baby in February.

Banks is scheduled to be released from the Racine facility Nov. 30, 2011.

Cook served two consecutive jail terms for the Blue Moon and related burglaries.

'This isn't just about Brittany'

Kim Heeg, Zimmermann's aunt, said she was unaware of a possible link between the Blue Moon break-in and her niece's slaying.

"All along, we have said someone, somewhere has to know who did this. ... This piece of information supports that," Heeg said. "This isn't just about Brittany. We need support from the community to help us get (whoever is responsible for the killing) off the street."

Contact Sandy Cullen at scullen@madison.com or 608-252-6137. Contact Ed Treleven at etreleven@madison.com or 608-252-6134.

Joseph Sommers

From: Robert Christensen <robertchristensen.atty@gmail.com>
Sent: Wednesday, January 19, 2011 12:35 PM
To: Joseph Sommers
Subject: Withheld discovery

Joe,

As I told you at the courthouse, I don't believe I had previously seen the report you showed me. I no longer have the file, it went to appellate counsel. I believe he passed his copy on to the client. The appeal was handled by Ralph Scygelski.

RAC

http://local.yahoo.com/info-16817725-sczygelski-ralph-j-scygelski-pangburn-law-firm-manitowoc

#73-a

Joseph Sommers

From: Robert T. Ruth <rob@madisonattorney.com>
Sent: Tuesday, January 18, 2011 4:01 PM
To: sommerslawoffice@msn.com
Cc: 'Ann Bowe'; rgb@benavideslaw.com; cakenter@yahoo.com
Subject: Re: Withheld discovery

My records show that I received two reports by Detective Rortvedt, one in reference to a December 20, 2004 interview with Mandy Bartz and one
in reference to a May 18, 2005 interview with a confidential source.
I have no January 10 or 13, 2005 report by Rortvedt. The confidential source only provided information about the Ortiz case. Jeik?s trial was in January-February of 2007 and my representation ended around May 2007, so I was not in a position to get any discovery from 2008. My records do not include a July 28, 2006 report by Detective Aguilu.

Rob Ruth

Quoting Joseph Sommers <sommerslawoffice@msn.com>:

> Dear Attys. Bowe, Ruth, Benavides, and Christensen:
>
>
>
> Late this past December I obtained police reports relating to David
> Suarez in the murder of German Gonzalez which occurred in January of
> 2004, roughly four months after the murder of Alex Ortiz. Robert
> Kaiser was the prosecutor in both matters. According to these
> reports, roughly ten months before charges were filed in the Ortiz
> matter, Suarez claimed to have played almost the identical role in the
> Gonzalez murder as he did in the Ortiz murder. Suarez admitted to
> participating in murder plot conversations, and claimed that Pablo
> Lopez did as well. One report from Detective Julie Rortvedt from
> January 13, 2005 has Suarez discussing both the Ortiz and Gonzalez murders in the same interview that occurred on January 10, 2005.
>
>
>
> Also, another significant report is one dated July 28, 2006 from
> Detective Rosa Aguilu wherein she reports that she discussed with
> Suarez on July 12,
> 2006 the claims from two prison inmates (Jose Ferreira and Alberto
> Ruiz) that Suarez had confessed to each that he was the actual
> murderer of Gonzalez.
>
>
>
> There is an additional extremely brief report from Det. Julie Rortvedt

#73-b

> dated
> 12/2/08 wherein she reports that on 7/16/08 she participated in a
> meeting that included Bob Kaiser and David Suarez in relation to the
> Gonzalez homicide. From my experiences, I've never seen a report of
> this type, and it is interesting that the report was done 4½ months
> after the fact and far after the trials relating to the Ortiz matter.
>
>
>
> From my review of the trial transcripts of all three trials, and from
> my review of the discovery that I received from Atty. Bowe, none of
> the aforementioned reports appear to have been turned over. I would
> assume that it these reports had been turned over, all of you would
> have utilized the information during your cross-examination. However, none of you did.
>
>
>
> Before I set things in motion, I want to make sure that my assumption
> is correct. Therefore, I am requesting that each of you give me a
> simple yes or no to whether the aforementioned was provided during
> discovery. It would be most appreciated if I could receive a prompt
> response. If you have any questions, feel free to inquire.
>
>
>
> Sincerely,
>
>
>
> Joseph L. Sommers
>
> (608)280-8060
>
>

#73-c

Joseph Sommers

From: Ann Bowe <atbowe@wi.rr.com>
Sent: Tuesday, January 18, 2011 8:28 AM
To: sommerslawoffice@msn.com
Subject: RE: Withheld discovery

NO!

From: Joseph Sommers [mailto:sommerslawoffice@msn.com]
Sent: Monday, January 17, 2011 10:57 PM
To: 'Ann Bowe'; 'Rob Ruth '; rgb@benavideslaw.com; cakenter@yahoo.com
Subject: Withheld discovery

Dear Attys. Bowe, Ruth, Benavides, and Christensen:

Late this past December I obtained police reports relating to David Suarez in the murder of German Gonzalez which occurred in January of 2004, roughly four months after the murder of Alex Ortiz. Robert Kaiser was the prosecutor in both matters. According to these reports, roughly ten months before charges were filed in the Ortiz matter, Suarez claimed to have played almost the identical role in the Gonzalez murder as he did in the Ortiz murder. Suarez admitted to participating in murder plot conversations, and claimed that Pablo Lopez did as well. One report from Detective Julie Rortvedt from January 13, 2005 has Suarez discussing both the Ortiz and Gonzalez murders in the same interview that occurred on January 10, 2005.

Also, another significant report is one dated July 28, 2006 from Detective Rosa Aguilu wherein she reports that she discussed with Suarez on July 12, 2006 the claims from two prison inmates (Jose Ferreira and Alberto Ruiz) that Suarez had confessed to each that he was the actual murderer of Gonzalez.

There is an additional extremely brief report from Det. Julie Rortvedt dated 12/2/08 wherein she reports that on 7/16/08 she participated in a meeting that included Bob Kaiser and David Suarez in relation to the Gonzalez homicide. From my experiences, I've never seen a report of this type, and it is interesting that the report was done 4½ months after the fact and far after the trials relating to the Ortiz matter.

From my review of the trial transcripts of all three trials, and from my review of the discovery that I received from Atty. Bowe, none of the aforementioned reports appear to have been turned over. I would assume that it these reports had been turned over, all of you would have utilized the information during your cross-examination. However, none of you did.

Before I set things in motion, I want to make sure that my assumption is correct. Therefore, I am requesting that each of you give me a simple yes or no to whether the aforementioned was provided during discovery. It would be most appreciated if I could receive a prompt response. If you have any questions, feel free to inquire.

Sincerely,

Joseph L. Sommers
(608)280-8060

#73-d

Joseph Sommers

From: Ronald G. Benavides <rgb@benavideslaw.com>
Sent: Tuesday, January 18, 2011 6:55 PM
To: sommerslawoffice@msn.com
Subject: Re: Withheld discovery

REPLY: I DO NOT RECALL RECEIVING OR REVIEWING ANY OF THE REPORTS YOU DESCRIBE. THE LAST REPORT YOU CITE WOULD HAVE BEEN PRODUCED OVER A YEAR FOLLOWING THE COMPLETION OF SERATE-ANDINO'S TRIAL.

R.BENAVIDES
On 1/17/2011 10:56 PM, Joseph Sommers wrote:
Dear Attys. Bowe, Ruth, Benavides, and Christensen:

Late this past December I obtained police reports relating to David Suarez in the murder of German Gonzalez which occurred in January of 2004, roughly four months after the murder of Alex Ortiz. Robert Kaiser was the prosecutor in both matters. According to these reports, roughly ten months before charges were filed in the Ortiz matter, Suarez claimed to have played almost the identical role in the Gonzalez murder as he did in the Ortiz murder. Suarez admitted to participating in murder plot conversations, and claimed that Pablo Lopez did as well. One report from Detective Julie Rortvedt from January 13, 2005 has Suarez discussing both the Ortiz and Gonzalez murders in the same interview that occurred on January 10, 2005.

Also, another significant report is one dated July 28, 2006 from Detective Rosa Aguilu wherein she reports that she discussed with Suarez on July 12, 2006 the claims from two prison inmates (Jose Ferreira and Alberto Ruiz) that Suarez had confessed to each that he was the actual murderer of Gonzalez.

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Before I set things in motion, I want to make sure that my assumption is correct. Therefore, I am requesting that each of you give me a simple yes or no to whether the aforementioned was provided during discovery. It would be most appreciated if I could receive a prompt response. If you have any questions, feel free to inquire.

Sincerely,

Joseph L. Sommers
(608)280-8060

indicia

1/h 18 mos
ADDA ass + HA

08cm3025 DC-FOP-
Kausen / Olson
Carasquillo - Frank
Romero - Ortego - Geier

Milieu - drug dealing - victim witnesses A's

2000WIApp206 ¶6

3/23/10 Senate-Andino says Romero boasted Carasquillo had hit him w/ the bat

904.01
Lee v. Illinois + Wisc. cases
Includes his own as well as others wrongdoing

David Suarez is witness
Went to site, 4 people there - incl. 2 As, Lewis Valentin + Suarez
Suarez asked time
C. hit w/ bat
Valentin said Suarez did shooting no Romero did

#74-a

Plan to kill somebody / Gonzalez / Ortiz
to get rid of drug competitor

Suarez not charged

In past he was involved in
Abel Ortiz murder
Picked up victim + took him to site
~~Not charged in that homicide~~

→ Two inmates writted who say Suarez
did the shooting

What his role was in Abel Ortiz
Shooting

Purpose: motive, opportunity
Motive: ~~killed for drugs~~
~~absence of accident~~

I'm at both of these but I don't do
anything -

Modus Operandi
Knowledge
Preparation Plan
From that case Suarez learned
guy knows how to play the game -
minimizes his own involvement, blames
others. That's what he planned to do
again

motive to curry favor
tells lies about Δs

#74-b

Trying to prove he acted in conformity therewith

Prejudicial affect on Mr Suarez
put his own life on line
~~Prejudicial to State~~
Being involved makes him less credible

Could reasonably draw inference that he did both of them
He wasn't the shooter

Clearly not accident
He was present because of plans to murder

Went to door, asked Ortiz to come w/ him
drove him to scene

Here had no thing to do w/ Gonzalez being at the scene

Chronology
Suarez confronted w/ Ortiz
Being prosecuted in fed ct
11/04 1st talked about Gonzalez murder

#74-c

first degree criminal homicide. The same thing I alluded to, Your Honor, in the press. This individual basically has given a statement, or basically actually he's changed the statement, his story, from time to time, and he has basically implied, basically, the individual was his source. He's also implying that he had a gun which up until today we were led to believe by the government and through the PSI that the gun was one and the same, which was supposedly taken from this other person.

Now, I believe that I should have a right to show that basically is, that his story is -- that he is changing his story, changing to protect this other individual, and I should have the right -- I should have a right to explore that at this point in time.

THE COURT: You can do that without using the name.

BY MR. SOMMERS:

Q All right. Is it safe to say that this unnamed individual, you are afraid of this unnamed individual?

A I am what?

Q You are afraid of this unnamed individual?

A No.

Q Well then, why don't you want to give his name?

A The reason -- Hold on. First of all, as far as being, I'm not afraid. Second of all, if that -- if that gun or, and whatnot had anything to do with me, I would have been

sentenced accordingly.

Q Are you trying to protect this person?

A No.

Q Then why won't you give his name? If you're not trying to protect him and you are not afraid of him, why did you refuse to give his name?

MR. VAUDREUIL: Your Honor, I'll object. He does not have to give his name because the Court has ruled he does not --

MR. SOMMERS: The Court ruled at one time, Your Honor. I think they just basically --

THE COURT: Mr. Sommers, the subject is closed.

BY MR. SOMMERS:

Q Isn't it true that you received cocaine in the end of November from the same individual that you had received cocaine prior from?

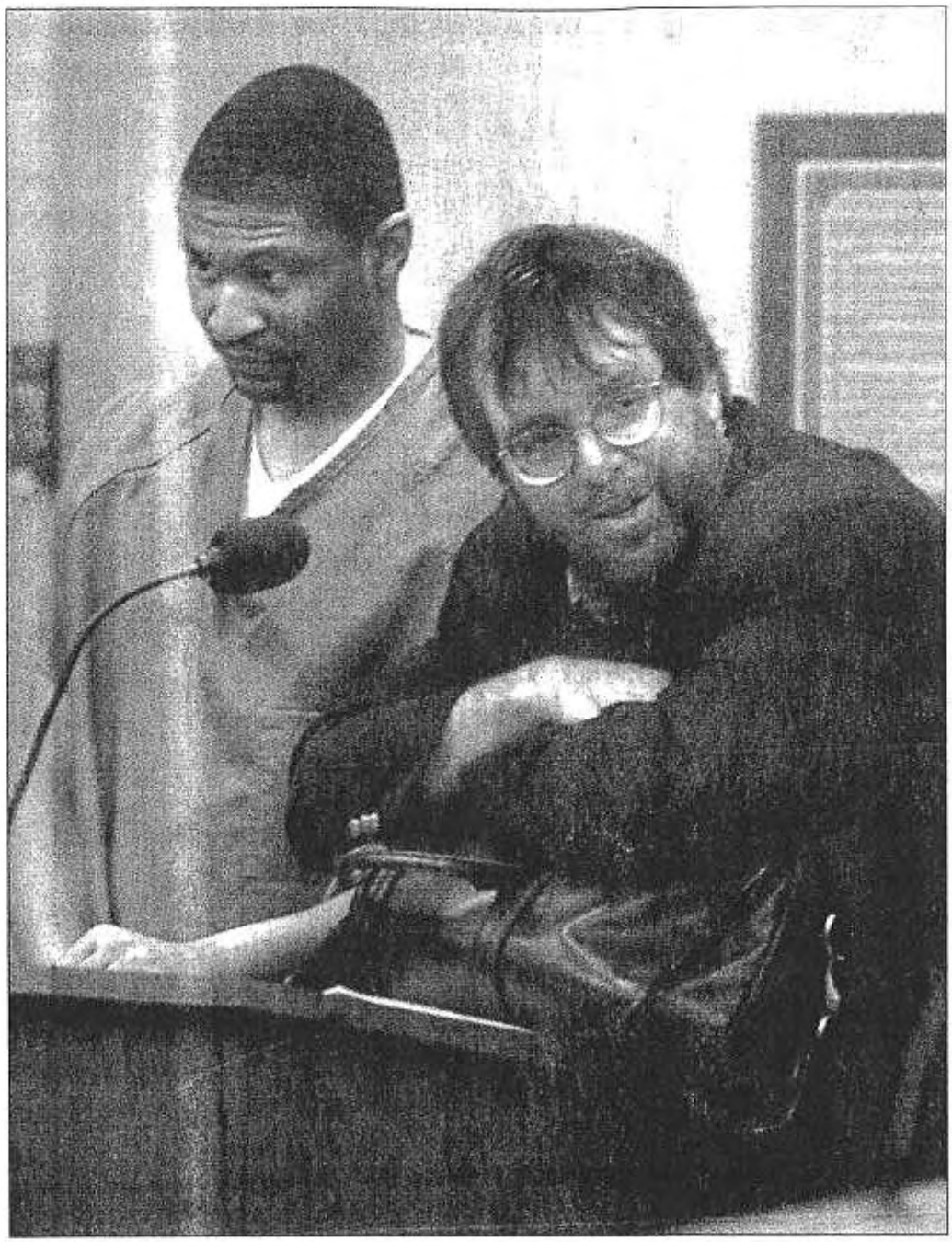
THE COURT: I'm sorry. You received cocaine --

MR. SOMMERS: Well, Your Honor, I guess, how can I do this now, because I can't -- basically, I mean, the way it should be straightforward is I should say, Can you -- Did this individual, and I should be able to name his name, give you cocaine to sell.

THE COURT: If it would make it easier for you, you could just say John Doe.

BY MR. SOMMERS:

Q All right. Did John Doe give you cocaine to sell in the end of November of 2002?
A At the end of November of 2002, the safe had been -- I no longer had direct dealings with the safe.
Q I understand that. After you no longer had direct access to the safe, were you still selling cocaine that you were receiving from John Doe?
A It was my assumption that was the case. I made in my statement that I did not have direct dealings with the purchasing of the cocaine from the time it was, it left my residence until December 4th.
Q So it's your testimony today that all of the cocaine that you sold after the safe was moved to Mr. McCants' home was cocaine that later came from that same safe?
A Say that again?
Q Well, isn't it -- I mean, you were selling cocaine after the safe was moved to Mr. McCants' home, correct?
A Correct.
Q And isn't it true that some of the cocaine that you sold after the safe was moved to Mr. McCants' home was cocaine that you received?
A Already.
Q From somebody else? Not from Mr. McCants?
A The cocaine that was in the safe when it left my residence and got to Mr. McCants' home, yes, I did sell that



HENRY A. KOSHOLLEK/THE CAPITAL TIMES

Thomas McCants (left), accused of killing Lizzette Fountain, appears in Dane County Circuit Court Thursday with public defender Joseph Sommers. An assistant district attorney questioned whether Sommers, who failed to show up in court Wednesday, delaying McCants' initial appearance, is qualified to handle a homicide case.

Innocent plea entered by suspected murderer

Appearance delayed by attorney no-show

By Joe Potente

The Capital Times

The man accused in the murder of his girlfriend, Lizzette Fountain, in their Fitchburg apartment registered a not guilty plea Thursday to a first-degree intentional homicide charge.

The initial court appearance for Thomas L. McCants, 24, originally was scheduled for Wednesday, but was delayed when his attorney, Joseph Sommers, failed to arrive in court.

McCants will be held on a $250,000 cash bond in the December killing, with his next court appearance scheduled for July 15 in front of Dane County Circuit Judge John Albert. The court first offered McCants a preliminary hearing within 10 days, but McCants elected to delay it because of scheduling conflicts with other cases Sommers is handling.

This decision came after Assistant District Attorney Mary Ellen Karst questioned whether Sommers, a public defender, is certified to handle a first-degree homicide case.

Fountain

Sommers retorted, citing his "six and one" record in Class B felony cases.

"I think I'm well qualified to represent him," Sommers said. Court Commissioner Todd Meurer ordered that Sommers would need to deal directly with the Public Defender's Office over matters concerning his credentials.

McCants, who also is due to appear in federal court today for a drug conviction stemming from narcotics found in his apartment after the murder, already faces a minimum of 10 years in prison for distributing crack cocaine after pleading guilty in April.

If convicted for Fountain's murder, McCants would face imprisonment for life, according to a criminal complaint filed Wednesday, which outlines his alleged involvement in the homicide.

According to the complaint, McCants shot Fountain in their apartment at 2002 Traceway Drive after a night of partying and lovemaking with Jukedra Thomas, a Madison woman with whom he had been carrying on a relationship for several months. After shooting Fountain, 19, in the early morning hours of Dec. 4 and leaving the apartment, McCants returned and called 911 shortly before 6:30 a.m. to report that Fountain was dead, the criminal complaint stated. Forensics investigators later discovered traces of gun powder on McCants' skin and clothing, the complaint said.

HENRY A. KOSHOLLEK/THE CAPITAL TIMES

Joe Johnson (left) of Wausau, the uncle of Lizzette Fountain, speaks with the media Thursday. With Johnson is Fitchburg Police Chief Thomas Blatter.

It was the comprehensive forensics investigations that led to a relatively late charge in the crime, Fitchburg Police Chief Thomas Blatter said.

"We had a certain time limit we were following and some of it involved scheduling expert witnesses and some of it involved getting forensic evidence back, and that takes time," Blatter said.

Speaking to reporters on behalf of Fountain's family after Thursday's hearing, Joe Johnson, one of the victim's uncles, praised the law enforcement efforts and said the family would like to see a conviction in the case that has left them in shock for the past six months.

"Like anything, it would put closure to it and it's not anything more than that," said Johnson, a former Madison resident who now runs a business in Wausau. "Nobody needed to die."

"My family believes that if we're patient with spiritual endurance and guidance, that this thing will move through," Johnson added. "I wish I could say things are going great, but that wouldn't be true."

E-mail: jpotente@madison.com

#76-b

FITCHBURG POLICE DEPT
Incident Report
5520 LACY RD
FITCHBURG WI 53711

Phone:(608)270-4300

Report 02-0018690.7J
Date 03/16/04
Time 9:17 AM

Narrative:

INTERVIEW OF STEVEN M. COLLINS

On July 24, 2003 at 10:57 a.m. I made contact with Steven M. Collins, identified on the face sheet of this report. Mr. Collins was incarcerated at the Dane County Jail and had previously requested contact with investigators related to the Lizzette Fountain homicide case. Detective Dave Bongiovani and myself had previously interviewed Collins on separate occasions related to information he claimed to have related to the homicide.

On 07/24/03 after making contact with Collins, I advised him of his Miranda Warnings, as I read the Miranda Warnings to Collins from a Rights Information card I was carrying. Additionally I read the Waiver of Rights section to Collins at which time he stated he understood his Miranda rights and was willing to waive his right to counsel. I advised Collins that I had reviewed his statements to Detective Bongiovani as well as his previous statements to myself, in addition to statements which he had made to City of Madison detectives who were investigating a separate homicide. I advised Collins that I was having difficulty understanding several conflicts in his statements and asked if he would be willing to go over with me the information he had related to the suspect in the Lizzette Fountain homicide. Collins stated that he would provide me with the information again and stated that he had been released from the Dane County Jail on April 7, 2003. Collins states prior to that time he had met with Packy Pollard (Rovar Pollard), who had also been housed in the Dane County Jail. Collins states after getting out of jail he made contact with Pollard, on April 15, 2003. Collins states at the time he met with Pollard, Collins and Pollard were at a park located just off of State Street in the City of Madison. Collins states he does not recall the name of the park other than it is not Peace Park and it has black benches in the park.

Collins states after meeting with Pollard in the park, he and Pollard had been drinking heavily. Collin states he asked Pollard what had happened with the "Little Mick homicide" as Collins had thought the police were looking at Pollard for the homicide. Collins states Pollard became upset and then pulled a handgun out, stating that it was the same gun he had killed Little Mick and Lizzette Fountain with. Collins states this incident was witnessed by a friend of Collins whom Collins knew only by the street name of "Homicide". I asked Collins how he could recall so specifically the date of the contact with Pollard. Collins states he recalls the incident due to the fact that after he had been confronted by Pollard, Collins had went to a bus shelter and had fallen asleep due to his high level of intoxication. Collins states he was subsequently arrested and has been incarcerated at the Dane County Jail since April 15th. Collins states while in the Dane County Jail prior to April 7, 2003 Packy Pollard had gone to court and upon his return made a statement to Collins stating that he now knew who had killed Lizzette Fountain.

At this point I advised Collins that his previous statements to me had indicated the conflict between he and Pollard had occurred on Allied Drive after shooting dice. Collins stated that this was not accurate and that his contact with Pollard, during which Pollard produced the handgun had occurred at a park off of State Street. I advised Collins I had also reviewed Madison Police Department reports in which he had provided differing statements to officers. I advised Collins that I was concerned that he was fabricating statements in an attempt to get some sort of leniency. I advised Collins that it was likely he was going to be called into court to provide testimonial evidence under oath. I advised him that if he lies under oath it was likely he would end up being charged with perjury. I explained that perjury was a very serious crime and that it was important he be 100 percent honest as to what he may have truly

FITCHBURG POLICE DEPT
Incident Report
5520 LACY RD
FITCHBURG WI 53711

Phone:(608)270-4300

Report 02-0018690.7J
Date 03/16/04
Time 9:17 AM

Narrative:

heard or been told. I advised Collins that at this point he had not committed perjury but he should think twice about doing so and should refrain from providing any false information to anyone.

Collins leaned back in his chair and then stated that he was not some villain against society and that they were trying to put him away for a sexual assault. I advised Collins that whatever cases he had going were separate issues and that he just needed to be honest as to what he had heard or been told and not commit any further crimes such as perjury. At this point Collins stated "alright I'll tell you what happened, my lawyer told me I could get leniency but I had to sign some papers saying McCants didn't do it, but McCants did do it, he told me he did it when he was coming out of visiting our lawyer." Collins went onto say that he only signed papers saying that Pollard had said that Pollard killed Lizzette Fountain because his (Collins) attorney said Collins could get leniency for signing the papers. Collins then stated that a couple days after he had signed the papers Thomas McCants was coming out of visiting his attorney as Collins was going into the visitation area. Collins states McCants mentioned Collins having signed the papers. Collins states he then asked McCants "did you really kill her". Collins states McCants responded by nodding his head affirmatively and stating "yeah". Upon Collins making these unexpected statements, I realized the gravity of them and advised Collins that I wanted to summon another law enforcement officer into the interview as a witness to the conversation taking place. I advised Collins it was important he be 100 percent honest with everybody and that I did not want to be the sole witness to his statements. I subsequently made contact with Dane County Jail Deputy James Franklin who was working in the 7 West area of the jail. Deputy Franklin agreed to come into the interview and witness the statement I was taking from Collins. Upon Deputy Franklin coming into the interview room I advised Collins that I would appreciate him repeating the statements he had just made to me as I wanted to be assured I was accurately noting his statements and doing so in the presence of a witness. Collins repeated the statement he had provided to me, providing the same account of events. I advised Collins that if he was fabricating statements at this time that it was utterly important that he acknowledge the fabrications and that he cease making any false statements. Collins again stated that he was telling the truth and that the only reason he had signed the previous affidavit or papers for his attorney was the belief that he would get leniency for doing so. I asked Collins who his attorney was at which time he stated that his attorney was Joseph Sommers, who is also Thomas McCants' attorney.

JAIL VISITS/COLLINS

I subsequently checked records at the Dane County Jail, related to visits to the jail by Joseph Sommers. This was done in order to credit or discredit the statements provided to me by Collins. And the specific statements that were related to Collins indicating he had visited with Sommers, as Sommers was just exiting an interview with Thomas McCants, and prior to interviewing Collins. The statement again from Collins was that Collins had contact with Thomas McCants as McCants was exiting a visitation with Sommers. Collins reported this type of contact with McCants occurred on two occasions and on the later occasion McCants had made a statement to Collins related to the fact Collins had signed papers related to McCants' case. Collins further stated it was at this time that McCants was asked by Collins "did you really kill the girl". Collins again states that McCants responded by saying "yeah I did".

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5520 LACY RD
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Report 02-0018690.7J
Date 03/16/04
Time 9:17 AM

Narrative:

In checking the visitor logs at the Dane County Jail, Joseph Sommers did in fact visit with Steven Collins for the first time on May 28, 2003 at 1:47 p.m. Sommers later on that same day visited with Thomas McCants at 8:22 p.m. On June 4, 2003 Sommers visited McCants at 1:31 p.m. and then visited with Collins at 1:38 p.m. On June 18, 2003 Sommers met with McCants at 7:24 p.m. and is logged in as visiting with Collins at 7:24:59. Sommers again visited with Thomas McCants on 06/20/03 at 7:04 p.m. and then visited with Steven Collins on 06/20/03 at 8:04 p.m. On June 27, 2003 Sommers met with Steven Collins at 8:12 p.m. and met with Thomas McCants at 8:20 p.m. On July 2, 2003 Sommers met with McCants at 7:37 p.m. and met with Steven Collins at 8:06 p.m. on the same date. On July 14, 2003 Sommers met with McCants at 2:13 p.m. and then met with Collins at 3:06 p.m.

The check of the Dane County Jail records was consistent with the information provided to me by Steven Collins.

EVIDENCE RECOVERED

Also while speaking with Steven Collins he indicated Joseph Sommers had provided him with a letter, which Collins referred to as an affidavit. Collins stated Sommers told Collins by signing the form that Collins could then get leniency on his charges. Collins states he had a copy of the form in his personal papers at the Dane County Jail. I subsequently met with Collins at the Dane County Jail on 07/24/03 at approximately 4:45 p.m. I asked Collins if he would be willing to provide to me the letters which he was referring to in which he stated he currently had in his property. Collins advised that he would provide the letters to me however stated he would like copies made of them so that he had a copy for his file. Collins further stated that the letters are signed by Joe Sommers, however the copy which Collins had signed was turned over to Mr. Sommers. Collins subsequently handed to me through the food slot in his jail cell a copy of three letters which he stated were handed to him by Attorney Joe Sommers. The first letter is originally dated May 30, 2003 with this date being crossed out and the handwritten date above this indicating 06/04/03. It should be noted this date is consistent with a visit by Sommers to Steven Collins at the Dane County Jail, shortly after Sommers met with Thomas McCants. The second letter is dated June 7, 2003. This letter does not have a notation upon it which the first letter did, that notation being "hand-delivered". It is also noted in the jail records that Mr. Sommers did not meet with Collins on June 7, 2003 at the Dane County Jail. The third letter is dated June 20, 2003. This letter does not have an indication indicating it was hand delivered however there is a log of Joseph Sommers' meeting with Steven Collins at the Dane County Jail, after having met with Thomas McCants on the same date and in close proximity to time. Refer to the attached copies of the letters which are attached to this report. After receiving the letters from Mr. Collins I returned to the Fitchburg Police Department and made copies of the letters and then placed the originals into evidence at the Fitchburg Police Department. Upon completion of these reports being typed I request that the reports be immediately forwarded to the Dane County District Attorney's Office attention to Assistant District Attorney Matt Moeser.

NO FURTHER ACTION TAKEN

Detective Todd Stetzer
TS:dr 07/25/03
18690-02 7J

#77-c

STATE OF WISCONSIN CIRCUIT COURT BRANCH DANE COUNTY

STATE OF WISCONSIN,
Plaintiff

vs.

Case No. 2003 CF 1395

THOMAS L. MCCANTS,
Defendant

AFFIDAVIT OF TODD STETZER

Your affiant, Todd Stetzer, being duly sworn and under oath, states the following:

1. Your affiant is a detective with the City of Fitchburg Police Department.

2. Your affiant is assigned to the investigation of the death of Lizzette Fountain at 2002 Traceway Drive, City of Fitchburg, Dane County, Wisconsin.

3. Your affiant is aware that the Dane County District Attorney's Office has filed a criminal complaint in this matter charging Thomas Lewis McCants with First-Degree Intentional Homicide While Using a Dangerous Weapon contrary to sections 940.01(1)(a) and 939.62(1)(a)(2) of the Wisconsin Statutes in Dane County Case Number 2003 CF 1395.

4. Your affiant is aware from court proceedings that Attorney Joseph Sommers represents Thomas McCants in this matter. Your affiant is also aware that Joseph Sommers has represented McCants in various federal and state criminal proceedings since January 2003.

5. Your affiant has reviewed electronic records of the Dane County Circuit Court available to the public on the Wisconsin Circuit Court Access website. Your affiant knows that the information on this website is based upon the records of the individual counties' clerk of circuit court office. Your affiant knows that the Dane County Clerk of Circuit Court maintains records of Court proceedings and case information in the regular course of its official business as a government agency. Your affiant has previously relied upon such information and found it to be truthful and reliable.

6. Your affiant has reviewed the information contained on the Wisconsin Circuit Court Access website in Dane County Cases 2003 CF 1111 and 2002 CF 441, both regarding State of Wisconsin v. Steven M. Collins. Your affiant reports that in both cases, the Dane County Clerk of Circuit Court lists Joseph Sommers as the attorney of record as of May 30, 2003 and continuing through the date this affidavit is executed.

7. Your affiant has reviewed a police report prepared by Detective David Bongiovani of the Dane County Sheriff's Office detailing a conversation Detective Bongiovani had with Steven Collins in the Dane County Jail on May 14, 2003, regarding the Fountain homicide. A copy of that report is attached to and incorporated by reference to this affidavit. Your affiant believes this report to be truthful and reliable because it was prepared in the course of Detective Bongiovani's official duties as a sworn law enforcement officer. Detective Bongiovani also received a list of demands from Collins during that contact. That list of demands is attached to this affidavit and incorporated by reference. Detective Bongiovani concluded that Collins was not being truthful and ended his interview.

8. Your affiant went to the Dane County Jail on or about May 23, 2003, after Collins indicated through Dane County Sheriff's deputies a renewed interest in providing information about the Fountain homicide. Collins told you affiant that his then-attorney (later identified through Clerk of Circuit Court records as Pam Fruth) told Collins that it was unlikely that any investigators or prosecutors would agree to his demands and that he should drop his demands and cooperate in the hope that he might receive leniency in his own legal matters. Collins told your affiant that he had been in a fight with an individual known to him as Packey or Packey Pollard (later identified as Rovar Pollard) on Allied Drive. Collins stated that Pollard pulled out a revolver and told Collins that Pollard would shoot Collins with the same gun he used to kill the girl in Fitchburg. Your affiant reports that prior to May 23, 2003, your affiant is aware that information had been released to the public that police officers located a revolver in a safe located in Fountain's apartment. Your affiant concluded that Collins was not providing reliable information.

9. On July 18, 2003, your affiant was present in Dane County Circuit Court in this matter for McCants' preliminary examination. Your affiant reports that Sommers indicated to Judge John Albert that he had subpoenaed a witness who failed to appear pursuant to that subpoena. Sommers told Judge Albert that this witness had told others that the witness shot Fountain. Sommers told Judge Albert that he had another accessible witness who would testify that the witness who failed to appear admitted to murdering Fountain. Your affiant observed the witness subpoena submitted to Judge Albert by Sommers and observed that it was a subpoena for Rovar Pollard.

10. On July 18, 2003, your affiant spoke to an individual who identified himself as Rovar Pollard. Pollard told your affiant that he had no involvement in Fountain's death and had never claimed that he shot Fountain. Pollard told your affiant that he did not know anyone named Steven Collins nor anyone who used the street name "Bishop." Your affiant reports that "Bishop" is a nickname for Collins.

11. On July 23, 2003, your affiant spoke to Pollard after Pollard was arrested on several warrants and incarcerated at the Dane County Jail. Your affiant displayed to Pollard a Dane County Sheriff's Office booking photograph of Steven Collins with the name hidden. Your affiant knows that the Dane County Sheriff's Office maintains such photographs in the regular course of its business as an official government agency. Your affiant has previously relied upon these photographs in the past and found them to be accurate. Pollard indicated that he did recognize Collins. Pollard said that he and Collins had met in the jail and had been involved in a fight at the jail. Your affiant reviewed the Dane County Sheriff's Office jail log and determined that Pollard was a suspect in a fight to which Collins was a witness on or about April 4, 2003. Your affiant knows that the Dane County Sheriff's Office maintains such logs in the regular course of its business as an official government agency. Your affiant has previously relied upon these records in the past and found them to be accurate and reliable. Pollard stated that he only knew Collins from the jail and that Collins had questioned Pollard once about why Pollard was cutting out a newspaper article about the Lawrence Williams homicide in the City of Madison. Pollard told Collins that the police had questioned Pollard about any knowledge he had about that homicide. Your affiant knows through Detective Bongiovani that Collins attempted to provide information to City of Madison Police Detective Tom Woodmansee about that homicide.

12. On July 24, 2003, your affiant spoke to Collins. Collins now claimed that he had a confrontation with Pollard on State Street. Your affiant confronted Collins about his changing stories and Collins admitted to your affiant that he had been lying. Collins admitted that Pollard never told Collins that he killed Fountain. Collins claimed that Pollard guessed that Fountain's boyfriend (McCants) killed Fountain. Collins stated that he tried to provide false information in an effort to secure leniency in his own criminal cases. Collins told your affiant that Collins told Sommers that he had information about the Fountain case and knew that McCants did not commit the crime. Collins said that Sommers subsequently asked him to sign a document acknowledging that Collins told Sommers that information. Collins did so and turned over to your affiant a copy of the letter that Collins indicated he signed that is attached to and incorporated by reference. Collins turned over two additional letters from Sommers that are attached and incorporated by reference.

13. Collins told your affiant that after signing the letter, he encountered McCants as McCants was leaving a visit with Sommers. McCants made statements indicating

that he was aware Collins had signed the letter. Collins stated that he asked McCants if McCants really killed Fountain and McCants responded affirmatively.

14. Your affiant has reviewed the Dane County Sheriff's Office jail visitor logs for Sommers' visits to inmates in the Dane County Jail for April 18, 2003, through June 24, 2003. Your affiant knows that the Dane County Sheriff's Office maintains such logs in the regular course of its business as an official government agency. Your affiant has previously relied upon these records in the past and found them to be accurate and reliable. A printout of this log is attached to this affidavit and incorporated by reference. It shows that Sommers visited both Collins and McCants on the following dates: May 28, 2003, June 4, 2003, June 18, 2003, June 19, 2003, June 20, 2003, June 27, 2003, July 2, 2003, July 14, 2003, July 15, 2003, and July 24, 2003.

So sworn this 31 day of July 2003:

Detective Todd Stetzer
City of Fitchburg Police Department

Subscribed and sworn to before me
this 31st day of July, 2003

Notary Public,
My commission expires 1/31/05

jvmain | Visitor Log Table | Spillman | Mail | Key | Rec 472

*Time/Date In	Visitor	Visitee	Post	Dest
*21:28:30 05/09/2003	JOSEPH L SOMMERS	JOHN ISSAAC SMITH	CCCV	CVMA
*21:39:14 05/09/2003	JOSEPH L SOMMERS	MARCUS CHRISTOPHER R	CCCV	CVMV
*18:41:48 05/14/2003	JOSEPH L SOMMERS	MARCUS CHRISTOPHER R	CCCV	CVMA
*19:26:06 05/14/2003	JOSEPH L SOMMERS	LUIS ENRIQUE PILONA	CCCV	CVMV
*19:35:18 05/14/2003	JOSEPH L SOMMERS	ELIGIO BACALLAO JR	CCCV	CVMA
*19:36:00 05/22/2003	JOSEPH L SOMMERS	ELIGIO BACALLAO JR	CCCV	CVMA
*19:53:30 05/22/2003	JOSEPH L SOMMERS	MARCUS CHRISTOPHER R	CCCV	CVMA
*13:47:07 05/28/2003	JOSEPH L SOMMERS	STEVEN MICHAEL COLLI	CCCV	CVMA
*20:15:36 05/28/2003	JOSEPH L SOMMERS	TERRY LEE BROOKS	CCCV	CVMA
*20:22:46 05/28/2003	JOSEPH L SOMMERS	THOMAS LEWIS MCCANTS	CCCV	CVMA
*20:55:36 05/28/2003	JOSEPH L SOMMERS	MATTHEW STEVEN AARVI	PSBV	PSBA
*13:31:32 06/04/2003	JOSEPH L SOMMERS	THOMAS LEWIS MCCANTS	CCCV	CVMA
*13:38:33 06/04/2003	JOSEPH L SOMMERS	STEVEN MICHAEL COLLI	CCCV	CVMA
*20:35:05 06/05/2003	JOSEPH L SOMMERS	THOMAS LEWIS MCCANTS	CCCV	CVMA
*20:56:04 06/05/2003	JOSEPH L SOMMERS	DONALD PHILLIP HEISL	CCCV	CVMA
*19:24:02 06/18/2003	JOSEPH L SOMMERS	THOMAS LEWIS MCCANTS	CCCV	CVMA
*19:24:31 06/18/2003	JOSEPH L SOMMERS	JOHN ISSAAC SMITH	CCCV	CVMA
*19:24:45 06/18/2003	JOSEPH L SOMMERS	TERRY LEE BROOKS	CCCV	CVMA
*19:24:59 06/18/2003	JOSEPH L SOMMERS	STEVEN MICHAEL COLLI	CCCV	CVMA

(SpaceBar) toggles mark, (C)lear all, (M)ark all, (R)educe to marked records

A SPILLMAN 170.125.19.38 1 1/1

#78-e

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz, Administrator
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In the Matter of 021711-391882-A

DECISION

Julian G. Thomas
Public Safety Building
115 W Doty St
Madison, WI 53703-3202

Hearing in the matter of the recommended revocation of the extended supervision of Julian G. Thomas was held at the Public Safety Building, Madison, Wisconsin, on March 29, April 14, and June 1, 2011, before Robert G. Pultz, Administrative Law Judge, Wisconsin Division of Hearings and Appeals.

APPEARANCES: Julian G. Thomas appeared in person and by Attorney Joseph Sommers.

The Division of Community Corrections appeared by Joe Packard, Agent.

ALLEGATIONS:

1. On or about 7/12/10, Julian Thomas did, while threatening harm to an employee, take money belonging to the Check Advance Store at 505 W. Main Street in Sun Prairie, WI without their consent. This behavior is in violation of rule #1 of the Rules of Community Supervision signed by him on 6/16/09.

2. Between 12/10/10 and 2/9/11, Julian Thomas failed to make any payments towards his supervision fees as instructed by this agent. This behavior is in violation of rule #11 of the Rules of Community Supervision signed by him on 6/16/09.

FINDINGS OF FACT, CONCLUSIONS OF LAW

Mr. Thomas was sentenced to one year confinement and three years extended supervision (ES), 18 months confiment-18 months ES consecutive, following convictions for Delivery of Cocaine and Forgery in Rock and Dane County Circuit Courts. Mr. Thomas is also on probation for eight years, sentences withheld, following convictions for five additional counts of Forgery. Release to ES occurred on 07/29/09.

Mr. Thomas, by his attorney, stipulated to allegation two. Based on this stipulation, I find Mr. Thomas violated his supervision by failing to pay supervision fees.

A police report is part of the record in this case. Hearsay evidence is admissible in a revocation proceeding. See Wis. Admin. Code § HA 2.05 (6) (d). It may form the basis of a revocation decision whenever it "bears substantial indicia" of reliability. See *Egerstaffer v. Israel*, 726, F.2d 1231 (7th Cir. 1984) and the general discussion of hearsay evidence in *State ex rel. Henschel v. H&SS Dept.*, 91 Wis.2d 268 (Ct. App. 1979) and *State ex rel. Thompson v. Riveland*, 109 Wis.2d 580 (1982). Also see the discussion in *State ex rel. Prellwitz v. Schmidt*, 73 Wis.2d 35, 242 N.W.2d 227 (1976), citing *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 Sup. Ct. 2593 (1972) on the use of "letters, affidavits, and other material that would not be admissible in an adversarial criminal trial" as well as the comments on the use of "conventional substitutes for live testimony" in *Gagnon v. Scarpelli*, 411 U.S. 778, 783, 93 Sup. Ct. 1756 (1973). Police reports bear substantial indicia of reliability because they are business records of a public agency. *Mitchell v. State*, 84 Wis.2d 325, 267 N.W.2d 349 (1978). This report was supplemented with testimony from Sun Prairie Police Officer Randall Sharpe.

Pauline Cooper testified she was robbed by Mr. Thomas on July, 12, 2010, while she was working at the Check Advance Store in Sun Prairie, WI. She testified she did not know Mr. Thomas and was able to identify him from a photo lineup. She described clothing Mr. Thomas was wearing and provided details of how the robbery was committed. Ms. Cooper admitted she falsified a story of being robbed of money that belonged to Check Advance while traveling to a bank to make a deposit. She made this report to Sun Prairie Police, but after a police investigation and questioning admitted it was false. Ms. Cooper admitted she kept the money intended for the Check Advance bank deposit and paid it to her husband's drug dealer. Ms. Cooper testified she had been threatened by the drug dealer prompting her to steal the money. Ms. Cooper became a suspect in two other robberies of the Check Advance Store, including the one at issue here, after police learned of the falsified report. The two in-store robberies of Check Advance were done in a similar manner. Ms. Cooper testified she does not know Michael Evans.

Michael Evans, former friend of the Mr. Thomas's, testified Mr. Thomas robbed Check Advance on 07/12/10. Mr. Evans stated he went with Mr. Thomas to rob the Check Advance, but Mr. Evans came back to his vehicle from the store without doing it he had to leave to go to his daughter's high school graduation ceremony. He testified Mr. Thomas borrowed one of his (Evan's) cars and later went back to rob the Check Advance. Mr. Evans testified he told Mr. Evans the method he used in committing a prior robbery at Check Advance in March of 2010. After the second robbery, Mr. Evans viewed the money in Mr. Thomas's possession and was told how the robbery was committed. Clothing, described by Ms. Cooper, as worn by the man in the robbery was found at Mr. Evans's home. Mr. Evans told police this clothing, including a dew rag, belonged to Mr. Thomas. Mr. Evans has been charged with the March 2010 robbery of Check Advance and is on bail monitoring. Mr. Evans lied to police about his involvement in first Check Advance robbery until he was confronted with DNA evidence that linked him to the robbery note. Mr. Evans also initially lied to police about his whereabouts and use of vehicles on the dates of the second robbery at Check Advance. A recent DNA result from the State Crime Lab demonstrates Mr. Evans is the source of DNA from the dew rag that was worn in the second robbery and which was found in his home. Mr. Evans testified he does not know Pauline Cooper.

Douglas Cooper testified his wife, Pauline Cooper, identified Michael Evans to him in the lobby on the Public Safety Building while she was waiting to testify in this matter. Mr. Cooper is aware a man he knows as "K" threatened his wife regarding a debt he owed. Mr. Cooper denied this debt was drug related. He also denied "K" was Michael Evans.

By Affidavit, the defense submits evidence from investigator William Garrott who indicates Camile Major admitted to him that she was "put up" to falsely testify against Mr. Thomas in a pending felony forgery case. The forgery matter is not an issue here as the Department has not submitted a relevant allegation. Ms. Major also told the investigator Mr. Evans wrote both forged checks that she later cashed.[1]

The Department does not have the luxury of selecting their witnesses. In this case the case against Mr. Thomas relies on the testimony of Michael Evans and Pauline Cooper. There is no physical evidence, DNA results, or other facts that support a conclusion Mr. Thomas robbed the Check Advance Store on July 12, 2010. It is a fact that Michael Evans previously robbed the Check Advance using a method similar to the one employed on July 12, 2010. A dew rag recovered from Mr. Evans home, which is indentified as worn by the July 12th robber is a DNA match to Mr. Evans. Other clothing worn in the second robbery was recovered from Mr. Evans home, but his wife told police the clothing was the property of Mr. Thomas. Mr. Evans has admitted to the first robbery, but lied to police about his involvement until DNA linked him to the handwritten note. Mr. Evans also lied to police about his whereabouts on July 12, 2010 and the use of his vehicles on that day. He admits, in incriminating Mr. Thomas, that he went to the Check Advance with Thomas planning to commit a robbery but said Thomas backed out. Mr. Evans's vehicle was indentified near the Check Advance during the time the July 12th robbery took place. Mr. Evans has been charged with one robbery and has an extensive criminal history. He denied knowing Pauline Cooper, but it is clear from the testimony of Douglas Cooper that she knows and identified him to her husband in the lobby of the Public Safety Building. Mr. Evans is about as unreliable as it gets in these hearings. His story has shifted and changed. He has much to gain by implicating someone else in the second robbery of Check Advance. The recent DNA match makes him a more likely suspect than Mr. Thomas in the July 12, 2010 robbery. Given these facts, I cannot find Mr. Evans to be reliable or credible.

While Pauline Cooper identified Mr. Thomas as the person who robbed her at Check Advance, there are more reasons to disbelieve than believe her testimony. Ms. Cooper embezzled money from Check Advance while claiming she was robbed on her way to the bank. She denied this until police confronted her with overwhelming evidence she was lying. Ms. Cooper testified she did not know Mr. Evans, but told her husband who he was while they were at the PSB. Ms. Cooper testified her husband was a drug user who owed money to his supplier. She was at one point willing to embezzle money from her employer to pay this debt. Ms. Cooper could be charged with a felony for her embezzlement. At one point, Ms. Cooper was a considered a suspect/co-conspirator in the July 12, 2010 Check Advance Robbery. Ms. Cooper is far from a

[1] The record was held open only to allow introduction of the affidavit of Mr. William Garrott. Mr. Sommers submitted further argument in another correspondence and information concerning other possible evidence. The Department objected in writing. The objection is sustained. The record was held open for the sole purpose of considering the affidavit.

disinterested witness and has much to gain from her testimony. Given this background, I cannot find Ms. Cooper to be a credible or reliable witness.

At the argument stage the Department apparently threw in the towel concerning Mr. Evans's credibility, but urges the DHA to believe Pauline Cooper and place trust in her at hearing identification of Mr. Thomas. Given the problems with Mr. Evans and Ms. Cooper as witnesses, I have combed the record to find even a single piece of physical evidence or an objective fact that would support her testimony, and have found none. Moreover, the testimony of Mr. Evans and Ms. Cooper is intertwined. If we accept the credibility of one, we also have to accept the veracity of the other. I find neither to be credible. In sum, there are more likely suspects in the July 12, 2010 robbery than Mr. Thomas. Therefore, I cannot reach a conclusion it is more likely than not that he committed that act. Hence, I find the Department failed to meet their burden of proof on allegation number one.

It is clear the Department proceeded to revocation on allegation number one. Allegation two does not rise to a level of conduct requiring revocation at this time. Mr. Thomas needs to pay his supervision fees. However, that was not what this hearing was about. The Department may renew their revocation request if Mr. Thomas is found guilty of the Check Advance robbery in circuit court. *State ex rel. Leroy v. H&SS Department*, 110 Wis.2d 291, 329 N.W.2d 229 (Ct.App. 1982).

Pursuant to a stipulation by the parties, I find the following sentence credit is due: from 07/29/09 to 07/31/09; from 08/31/10 to 09/02/10; from 10/22/10 to 12/10/10; and continuously from 02/09/11.

Reincarceration Time Available:
Case No. 05CF188; three years, zero months, and zero days.
Department recommends: zero years, ten months, and 24 days.
Case No. 08CF698; two years, eight months, and 28 days.
Department recommends: zero years, nine months, and 26 days.

ORDER

It is ordered that the ES and probation of Mr. Julian Thomas is not revoked.

Given under my hand at the city of Madison this 14th day of June, 2011

/s_____
Robert G. Pultz
Administrative Law Judge
Division of Hearings and Appeals
RGP/rgp

Wisconsin State Public Defender

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Protecting Justice for all Since 1977

Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State Public Defender

March 21, 2012

Joseph Sommers
PO Box 244
Oregon, WI 53575 0244

Re: SPD certification

Dear Mr. Sommers:

I have read the enclosed report from the Director of our Assigned Counsel Division regarding your representation of two public defender clients. The conduct is very concerning. This report provides more than enough good reason to suspend some of your certifications and proceed with a further investigation.

Based on the report of Deborah Smith dated February 15, 2012 and pursuant to Administrative Code PD 1.03(3)(a)1, I am suspending your certification for Trial 4 cases (Class A felonies) and Trial 3B cases (Class B – C, Ch. 980). A copy of the report and the Administrative Code section is enclosed. Ms. Smith will conduct the investigation. Failure to cooperate with the investigation may be grounds for decertification.

If you have any questions about the process, please contact Ms. Smith. Hopefully, we will be able to bring this investigation to a conclusion in a timely way.

Sincerely,

Kelli S Thompson
Wisconsin State Public Defender

FEDERAL DEFENDER SERVICES
OF WISCONSIN, INC.
LEGAL COUNSEL

Daniel W. Stiller, Federal Defender
Michael W. Lieberman, Supervising Attorney
Erika L. Bierma
Kelly A. Welsh

222 W. Washington Avenue
Suite 300
Madison, Wisconsin 53703

Telephone 608-260-9900
Facsimile 608-260-9901

October 25, 2010

Joseph L. Sommers
Post Office Box 244
Oregon, Wisconsin 53575-0244

Dear Mr. Sommers:

Michael Lieberman brought your letter of October 13 to my attention and then shared with me the details of your earlier correspondence. Because your most recent letter, in particular, speaks to certain perceptions of the organization for which I am responsible, I am responding in Mike's stead. In particular, I address your request for a "credible explanation" regarding FDSW's perceived refusal to appoint you to any cases over the preceding 15 months. Whether the explanation I provide is credible is something for you to decide, but that which I offer is sincere and based on Mike's input.

If we assign the term "blacklisted" its typical connotation (*i.e.*, an impurely-motivated exclusion), neither you nor any other lawyer has been "blacklisted" from the CJA panel in either of the districts that FDSW serves. Nor does the fact that you have not been receiving appointments have anything to do with your self-described "efforts to expose prosecutorial and judicial misconduct in Wisconsin." The reality is quite different.

Mike has a vision, endorsed by me, for the CJA panel in the Western District. That vision is of a group of private practitioners constituting a "panel" in more than name only. By this I suggest that Mike envisions the panel being comprised of a relatively small group of practitioners who are committed to being professionally tethered to one another and to the group of lawyers within the defender office. This is so for purposes of training; mentoring; keeping current with developments in federal law and procedure, as well as local policy; and, to the extent possible within the limits of conflict-of-interest analysis, brainstorming. It is not, as suggested in one of your earlier letters, cronyism. It is collaboration and a commitment to the honing of our individual and collective federal skills.

It is on this basis that you, quite frankly, find yourself on the outside looking in. It is Mike's perception that you have not attended any of the trainings that FDSW has made available during the five years of its presence within the Western District and that you have otherwise presented as a private practitioner hopeful of receiving court-appointed federal cases, rather than as an enthusiastic member of a panel. It is on this basis, and only this basis, that you are not receiving appointments.

You have sought an explanation and I have provided one. Though I imagine my explanation to be unsatisfactory from your perspective, it is my hope that by honoring your fair request for an explanation, the candor of the offered explanation will put the triggering dialog to rest. As I tend to do when fielding complaints from panel lawyers, I state two realities. *First*, the court has vested the responsibility for administering the CJA panel to this office. *Second*, panel membership and the accompanying receipt of appointments is a privilege and not a right. In these regards, lawyers desiring the privilege of receiving court-appointed federal cases are expected to embrace our vision for the development of a first-rate CJA panel. The generally-applicable flip side is that attorneys disinterested for whatever reason in embracing the described vision are, of course, free to forego the attendant privilege. Should you choose to embrace Mike's well-intentioned vision for the Western District panel, I have every reason to believe you would find yourself receiving appointments on an as-needed basis.

Sincerely,

Daniel W. Stiller
ch

Daniel W. Stiller

DWS/ch
cc: Michael Lieberman

Joseph Sommers
for WISCONSIN SUPREME COURT
www.SommersForSupremeCourt.com

Judges Playing With The Record: A Grave Threat To The Integrity Of The Wisconsin Courts

This issue will cause more howls of outrage with the legal establishment than anything else I've addressed. For a long time there has been a trend in Wisconsin to place judges above public scrutiny. What if, though, some judges feel entitled to play with the record? If the true notion of the 'Rule of Law' is to protect an individual from being subjected to arbitrary and capricious actions by government officials, doesn?t allowing judges to substitute alternative facts for those actually contained in the court record undermine the very heart of the 'Rule of Law'?

I have had the opportunity to appear before many good and honorable judges, and I don't mean at all to insinuate that the typical judge plays with the record. However, it is critical for the public to become aware that the examples outlined below are not isolated occurrences. From my experience, the trend in this direction is growing, and there appears to be no inclination in the judiciary to do anything about it. While many attorneys are disturbed by this trend, the common perception is that any attorney who calls attention to it will receive the 'kiss of death' professionally.

Judge Higginbotham's Revision Of The Record For The Benefit Of The Dane County District Attorney's Office[1]

On June 7, 2002, in the Raisbeck case, Dane County Case No. 02 CF 2708, Judge Paul Higginbotham specifically found that Dane County Assistant District Attorney Paul Humphrey filed a false affidavit in regard to the availability of the photographic evidence. On April 7, 2003, Judge Higginbotham on the record reiterated his specific findings that ADA Humphrey's affidavit was a fabrication. At that time Judge Higginbotham made further specific findings that ADA Humphrey's argument to the court on June 7, 2002, about the veracity of his affidavit, and Humphrey's letter dated June 10, 2002, explaining the affidavit's inaccuracies, were further fabrications.

Dane County District Attorney Brian Blanchard and Deputy District Attorney Judy Schwaemle requested that Judge Higginbotham revisit the issue. Following this request, Judge Higginbotham applied and was appointed by Governor Doyle to the Wisconsin Court of Appeals; after which he obtained a special order permitting him to revisit the issue. In his order and memorandum, Judge Higginbotham revised his earlier findings. Judge Higginbotham now concluded, despite comments about ADA Humphrey routinely stretching the facts, that Humphrey's repeated factual misrepresentations "were exaggerations rather than intentional misrepresentations." Not satisfied with his revision, Judge Higginbotham went one step further and falsely asserted that he had never made specific findings that Humphrey?s factual misrepresentations were intentional.

Judge Higginbotham's actions were brought to the attention of Governor Doyle, Attorney General Peg Lautenschlager, Supreme Court Chief Justice Shirley Abrahamson, and other public officials. Judge Higginbotham subsequently acknowledged that he had indeed made "the specific findings" he claimed never to have made in his memorandum and order. However, as of this date there is no indication that anyone (including the press) will ever hold Judge Higginbotham accountable for his playing with the record, or demand an answer to why he played with the record for the benefit of the Dane County District Attorney's Office.

The Court Of Appeals and Thomas Socha

In Forest County Case No. 2002 CF 16, Thomas Socha was charged with first degree intentional homicide. One would have hoped that, given the seriousness of the charge and because a conviction would result in a mandatory life sentence, Socha's constitutional right to a fair trial would have been scrupulously honored. One would have also hoped that if Socha was convicted, his constitutional right to appeal would likewise be scrupulously honored. As detailed below, regardless of whether Thomas Socha is guilty or innocent, it is easily verifiable that the Court of Appeals played with the record to cover up for Socha not receiving a fair trial due to the prosecutor inexcusably withholding evidence.

The Forest County District Attorney's Office had a critical problem to begin with in their prosecution of Thomas Socha for the murder of a Lance Leonard. All of the alleged other co-conspirators (Victor Holm, Vincent Holm, Beth Mrazik, and Dennis Drews) made no mention of Thomas Socha's involvement in the murder in their original statements, even though each implicated themselves and others. None implicated Socha until reaching plea agreements with the Forest County District Attorney's Office.

Another problem for Forest County District Attorney's Office was that a Forest County jail inmate named Roy Swanson came forward. Mr. Swanson was interviewed by law enforcement roughly four months before Socha's trial and in this interview he relayed a series of statements made to him by Victor Holm, who would be the state's primary witness against Socha. The information provided by Swanson contradicted Victor Holm's trial testimony in numerous aspects, and these inconsistencies would have been in furtherance of Socha's theory of defense.

The Swanson interview resulted in a one page summary/note, an audiotape, and a 48 page transcript of the contents of the audiotape. Despite Socha clearly being entitled to this evidence because it was both exculpatory and mandated to be turned over under the Wisconsin discovery statute, the Forest County District Attorney's Office inexcusably withheld this evidence from Socha's defense. Socha's defense would not become aware of this evidence until long after Socha's trial and sentencing.

On December 5, 2006, Socha's appeal was denied by the Wisconsin Court of Appeals' District III. There are so many factual distortions in this decision that one hardly knows where to begin. But two instances will illustrate the Court of Appeals' playing with the record. First, if one reads the decision, one finds that the Court of Appeals downplays numerous possible trial errors by repeatedly portraying the evidence against Socha as being overwhelming. But when the Court of Appeals lays out the evidence against Socha, it repeatedly obscures the fact that the alleged co-conspirators did not implicate Socha, despite implicating themselves, until they reached plea agreements.

Worse than the above, however, was how the Court of Appeals handled the withheld evidence. No mention was made of the audiotape. No mention was made of the 48 page transcript. The Court of Appeals in their decision reduced all the withheld evidence to "notes." Would anyone characterize an audiotape as a "note"? Would anyone characterize a 48 page transcript as a "note"? How could they justifiably reduce the entire extent of the withheld evidence to the summary/note?

Having arbitrarily reduced the withheld evidence, the Court of Appeals would go one step further to selectively edit the withheld evidence so that the reader of their decision would not know the extreme extent to which Holm's statements to Swanson contradicted his trial testimony. Thus, having narrowed the withheld evidence and selectively edited its contents, the Court of Appeals had little difficulty in: 1) deeming the withheld evidence as "inconsequential"; and 2) completely obscuring the degree of the prosecutor's misconduct.

Thomas Socha is under a life sentence. How can it be that in a matter as important as this the Court of Appeals feels entitled to play with the record? If the Court of Appeals can so capriciously redefine the actual

facts, can anyone be satisfied that Thomas Socha's constitutional right of appeal was protected? Can anything undermine the integrity of our courts more than this? Somebody, at some point in time, has to alert the public. And that is one of the reasons I am running for the Wisconsin Supreme Court.

Footnotes

1. **(Return)** Higginbotham is an announced supporter of Supreme Court Candidate Linda Clifford, a Madison civil attorney.

Vote for Joe Sommers on February 20th and April 3rd.

Joseph Sommers
for WISCONSIN SUPREME COURT
www.SommersForSupremeCourt.com

Why Innocent People Often Plead Out

The great majority of people convicted in Wisconsin (and Dane County) are guilty. The great majority in prison belong there. However, from my years as a defense attorney, I believe that far too many innocent people are convicted. And, to the amazement of many, innocents are usually convicted as the result of a plea rather than a trial. In Dane County, 1.5% of felony cases result in a trial, with less than 1% of misdemeanor cases going to trial.

To give further context, 25 years ago, roughly 1.8 million Americans were incarcerated, while today this number stands at approximately 7 million. One would think that given this tremendous increase, there must be many more jury trials today than there was 25 years ago. In fact, the opposite is true. What can explain such a paradox? The answer relates in part to a compromising attitude toward a defendant's constitutional right to counsel. Below are three everyday realities that go a long way in explaining the paradox.

First, after being criminally charged one often goes to the yellow pages. One sees ads (sometimes full page) where attorneys proclaim to be "tough", "aggressive", "experienced", etc. Often unknown to the consumer is that the advertising attorney maybe has not handled a jury trial in years, let alone won any. The unknowing consumer then is persuaded to fork over a large retainer (sometimes $10,000, $15,000, $20,000, etc.), only to find out that the attorney appears to have little interest in aggressively defending their case. The consumer often will then find that if he wants to take his case to trial, considerably more money will be required. At this point, whether innocent or guilty, the consumer is trapped. He does not have the money to continue, and there is no money left over to hire someone else, with the result being a plea due to the financial constraints.

One remedy for the above scenario would be to mandate truth in advertising. Simply require that all criminal defense attorneys provide prospective clients with the names and case numbers of jury trials they've handled in the previous six years, and which ones they have won. This reform alone, perhaps vehemently opposed by the bar, would protect many an unwitting consumer and greatly enhance the quality of representation.

Second, a little-known fact of the legal world is the ever-growing percentage of cases where the court appoints the defense attorney. There can be no greater proof to the decreasing effect this has on jury trials than what has happened in Dane County in Child in Need of Protective Services (CHIPS) cases. While parents in these matters have a right to a jury trial, no one can remember the last time one ended in a jury trial. Why? Because the defense attorneys are court contracted.

There are good judges, but even the best of judges are subject to human nature. The present 'assembly line' reality of our criminal justice system tempts all judges to become trial-avoidant. Jury trials are often messy and play havoc with the already overburdened court schedules. Court appointments have created a perverse incentive for defense attorneys not to aggressively defend their clients, and to obtain ironically a reputation for not going to trial. The situation is aggravated in that court appointments (which relate to cases where the client is not indigent enough to qualify for the State Public Defender, but not wealthy enough to afford an attorney), pay $30 more per hour than State Public Defender appointments. The simple fact of the matter is that court appointments tend to be the domain of attorneys who are trial-avoidant. This results at times in people pleading out because they feel they have little choice.

One practical solution that would greatly remedy the problem would be to substitute vouchers for court appointments. If defendants were given the opportunity to pick their own attorneys, this would reward attorneys who are more inclined to actively defend them. Further, the cost to the taxpayers, due to more cases going to trial, would be greatly alleviated if the pay rate for these cases was made the same as it is for the

SPD rate. This reform would go a long way in protecting innocent defendants.

Third, there are many Public Defenders who are good defense attorneys. However, Public Defenders often handle hundreds and hundreds of cases per year. This makes it extremely difficult for a quality Public Defender not to get burned out. The end result is that some Public Defenders never take a case to trial. For all practical purposes, for a defendant assigned to one of these Public Defenders, by definition, a guilty plea becomes the inevitable result. While I realize that the remedy to this scenario is more complex than to the above two, I also realize it is a problem that needs to be addressed. The price for not addressing it is innocent people being convicted.

While it is something to be addressed at another time, the 'assembly line' model of justice is not inevitable. Much of it relates to overcharging, and in some instances, unwarranted charges to begin with. The result of this has been to turn our courthouses into primarily bureaucratic institutions, rather than halls of justice.

If I am elected to the Wisconsin Supreme Court, I will make it a priority to alert the public to these scenarios and to possible remedies.

Vote for Joe Sommers on February 20th and April 3rd.

STATE OF WISCONSIN CIRCUIT COURT GREEN COUNTY

MINDY L. RETZLAFF; RICKI W RETZLAFF and MARGARET M RETZLAFF,

Plaintiffs,

-and-

ABC HEALTH INSURANCE COMPANY,

Involuntary Plaintiff,

-vs-

AMERICAN FAMILY MUTUAL INSURANCE COMPANY; MELODY L. FELLER (fna DURTSCHI); and GENERAL CASUALTY INSURANCE COMPANY OF ILLINOIS,

Defendants.

PLAINTIFFS' DISCLOSURE OF REBUTTAL EXPERT WITNESS

Case No. 04 CV 255
PI-Auto: 301010

Hon. James R. Beer

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In the event of the trial of this matter, plaintiffs may call the following rebuttal expert witness to testify:

REBUTTAL EXPERT WITNESS

1. Robert J. Krenz
Safety Engineering Associates, Inc.
2798 South Fish Hatchery Road
Madison, Wisconsin 53711-5398

See attached letter report of Mr. Krenz

Dated this 17th day of November, 2005.

BRENNAN, STEIL & BASTING, S.C.

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Justice Dane County Style

www.justicedanecostyle.com

Facts behind Channel 27's Coverage Correction (Speed Facts)

Summary of what the surviving passenger really said about the speed of Adam Raisbeck's vehicle at the time of the crash:

- First statements to police and hospital staff (during his extended stay): claims he was **asleep at the time of crash**
- No change until over two years later when he had a personal injury claim against Raisbeck: **tells DA's Office speed was 70 mph**
- **Signs hand-written statement claiming he told detective speed was 85 mph** (not 120 mph as detective claimed in her 1-21-04 report)
- **Claims changed speed story due to dreams he started having 6-months after the accident** (Detective Report of 1-21-04, Page 2)
- DA's Office, via **DDA Timothy Verhoff** on February 18, 2005, in a dispute with defense counsel, **belittles the credibility of the surviving passenger as "a guy who first says he was sleeping and then says up to 120 mph and makes differing statements."** (2-18-05 Tr. pg. 15)

The Remainder of this page provides the details of Channel 27's coverage correction as well as the detailed facts....

The difficulty of justice being done in Dane County could hardly be better illustrated than by what occurred in the Channel 27 news story of Wednesday, March 9, 2005. Channel 27 ran a 6:00 PM feature where former state school Superintendent John Benson was interviewed about his claims to the District Attorney's Office overseeing a miscarriage of justice in the Raisbeck matter. The piece was fair and even handed toward the sentiments of John Benson.

Toward the DA's Office misconduct involved and the role that Dane County judges have played in allowing it to flourish, we believe that an objective person (comparing the piece which can still be found on Channel 27's website to the information contained within this Justice Dane County Style website) would agree that much was "soft-pedaled." The flavor and the extent of the misconduct does not come through. Neither does the role that the Dane County courts have played in allowing this misconduct to flourish.

In light that this is Channel 27's first piece on the matter, their soft-pedaling is understandable, and one can see why they may want to do a more thorough investigation prior to going further with stronger content. Fair enough. But compare this attitude of caution and fairness toward the DA's Office and Dane County courts to that given to Adam Raisbeck.

The piece that ran on the 6:00 PM news which was reflected in the article that Channel 27 initially put on their website asserted , **"the case file includes testimony from a witness who believes**

Raisbeck was driving more than 100 mph at the time of the crash." In the news piece this was proclaimed as a document was scanned by the camera showing the claim of a 120 mph figure

Important Note: If the Channel 27 Reporter and camera would have scanned further down this same page they would have realized that the **surviving passenger's changed story regarding the speed of the vehicle occurred after "he began having dreams.... approximately 6-months after the accident."** (Detective Report of 1-21-04, page 2).

The problem with this, which unfortunately has now been heard by literally thousands of people and has undoubtedly affected their judgment to what is going on in the Raisbeck case, is that it is inaccurate and extraordinarily unfair to Adam Raisbeck. The real information was provided to Channel 27 and they have now changed their website. The current version (as of March 11, 2005) asserts **"The case file includes a statement to police from a witness who believed Raisbeck was driving more than 100 miles per hour at the time of the crash. But that witness later revised his estimate of the speed to 85. In January, an accident reconstruction expert hired by the prosecution pegged the car's crash speed at no more than 76 miles per hour."**

We believe that anybody would agree—mighty big difference. But even the changed version hardly does justice to the actual facts which are contained in this Justice Dane County Style website related to the fraudulent warrant and recounted below:

1. The surviving passenger (the witness Channel 27 is referring to) told the officers who came upon the scene of the accident and hospital staff during his extended stay that he was asleep at the time of the accident.

2. At some point, this surviving passenger retained a personal injury attorney whereby he had incentive to change his version because a conviction of Adam Raisbeck would strongly bolster his civil case.

3. Roughly 30 months after the accident, the DA's Office provided a detective's report to Raisbeck's defense claiming that this surviving passenger was now asserting that the speed of the vehicle was 120 mph at the time of the crash.

4. The surviving passenger's mother has signed an affidavit where she has asserted that, even though she had numerous discussions with her son (who lived with her), she was never aware that her son had claimed that Raisbeck was driving in excess of the speed limit on the night of the accident.

5. The surviving passenger has provided a hand-written statement where he disputes the detective's claim that he placed the figure at 120 mph. He claims he told her the figure was 85 mph.

6. The DA's Office has admitted that the first time they ever spoke with the surviving passenger about his change of memory, he told them that the speed at the time of the accident was 70 mph.

7. The DA's Office, despite numerous representations to having turned over all evidence to which the defense was entitled, withheld this fact for months until the eve of Raisbeck's then-scheduled trial of May 24, 2004. And this information was provided begrudgingly and only after considerable efforts on the part of Raisbeck's defense counsel.

8. The DA's Office escaped sanction for the withholding of the 70 mph figure because Judge Moeser, on October 21, 2004, ruled that **"I think any reading of that (the 120 mph claim), in context, it's clear that there was a mistake made. Nobody ever said that somebody was going 120 mph and meant it."** (10-21-04 Tr. pg. 138-139).

9. After Raisbeck's defense contended that it believes the 120 mph figure was meant by the state as an attempt to win the case without needing to use an accident reconstruction expert (and thereby convince Raisbeck to plead), **the DA's Office via DDA Timothy Verhoff on February 18, 2005 disputed this, belittling the credibility of the surviving passenger as "a guy who first says he was sleeping and then says up to 120 mph and makes differing statements." (2-18-05 Tr. pg. 15)**

10. As mentioned by Channel 27's corrected version, the state's theory of prosecution is that the speed of the vehicle at the time of the crash at the high-end was possibly 76 mph. The piece doesn't reflect that the utilization of the same expert's numbers, when plugged into another speed calculation formally used by the DA's Office former expert, produces a speed estimate between 62 and 69 mph.

11. While it is understandable that Channel 27 may not have gotten the details exactly right and may not have possibly understood what all the details were, and maybe even now doesn't quite grasp all the details, wouldn't any fair minded person agree that what they did was extraordinarily unjust and unfair to Adam Raisbeck? Why wasn't Adam Raisbeck entitled to the same degree of caution that was afforded to the DA's Office and Dane County judges?

The answers to all of the above are why this website is so necessary. It is about time that somebody, someplace, begins speaking up for the Adam Raisbecks of the world, especially in Dane County!!!