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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Corrections and Courts (AC-CC)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)



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OF THE
DISTRICT ATTORNEY

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September 4, 2001

Representative Scott Walker
Room 308 North
State Capitol
P.O. Box 8953
Madison, WI 53708

VIA FAX 608-282-3614

RE: Criminal Appeals Unit of the Wisconsin Department of Justice

Dear Representative Walker:

My attention has been drawn to the fact that the Criminal Appeals Unit of the Wisconsin Department of Justice has recently been the subject of much criticism and controversy. I understand that the situation giving rise to these concerns involved the miscalculation of a jurisdictional deadline which served to negate the State's ability to petition the Wisconsin Supreme Court for review of an appellate court decision that vacated a conviction within a serious sexual assault case.

I know little of the circumstances relating to the case at issue beyond those referenced. However, I am able to state that throughout the entirety of my nine year tenure as the district attorney of this county, the highly competent lawyers of the Criminal Appeals Unit have served as an irreplaceable resource. It is impossible to quantify the number of occasions upon which I have called upon those individuals serving within this body for the purpose of updating research and acquiring advice. These assistant attorneys general also provide semi-annual training to those of us in the prosecutorial ranks, thus keeping us updated with legal developments past and anticipated. Furthermore, the members of this unit have more than competently briefed and argued every appeal relating to the numerous Waushara County cases that it has handled. There are currently two separate attorneys within this unit who are litigating significant sexual assault cases; one pending at the court of appeals and the other being briefed within the Wisconsin Supreme Court. I firmly believe that these critical matters have been and will continue to be addressed with the utmost of care and competence.

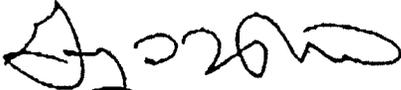
I appreciate that a critical error has been made and that significant consequences have evolved. However, I would assert that use of this isolated incident as a basis for

Page 2
September 4, 2001

indictment of either the Criminal Appeals Unit or any of its individual lawyers would be a measure that ignores an otherwise impressive track record.

I am most appreciative of being extended the opportunity to provide input regarding these concerns. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Guy D. Dutcher". The signature is fluid and cursive, with a large initial "G" and "D".

Guy D. Dutcher
District Attorney

GDD:klm

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September 4, 2001

Hon. Scott K. Walker
Room 308 North
State Capitol
P.O. Box 8953
Madison, WI 53708-8953

Dear Representative Walker:

I am writing because I know the Assembly Committee on Corrections and the Courts will soon be holding a hearing on the Criminal Appeals Unit of the Wisconsin Department of Justice in light of a recent case in which a petition for review was not timely filed. Inasmuch as I have significant experience litigating against that Unit, I thought you might be interested in my views.

Although I am Dean and Professor of Law at Marquette University Law School and Chair of the Appellate Practice Section of the State Bar of Wisconsin, I write in my personal and individual capacity as a lawyer who has litigated against the criminal appeals unit of the Wisconsin Attorney General's office for more than 30 years, going back to the time that Bronson LaFollette and Robert Warren were Attorneys General. Currently, I am doing twenty *pro bono* criminal appeals a year against the A.G.'s office, as well as several federal habeas corpus appeals involving that same unit in the United States Court of Appeals for the Seventh Circuit. In addition, over the last 20 years I have been involved in extensive appellate litigation against the attorneys general of Illinois, Indiana, Missouri, and Arkansas, as well as the United States Attorneys in the nine federal districts in those four states. So I do have some basis for comparison. Over the last 30 years I have handled in excess of 500 post-conviction cases in Wisconsin, and more than 200 in the other states. I believe that I have more criminal appellate experience than any other lawyer in the State, so I speak as an advocate rather than an academic.

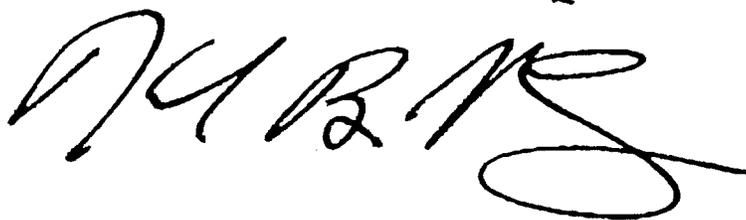
Over the years, the criminal appeals unit of the Wisconsin Department of Justice has been extremely professional, demonstrating a maturity of judgment that I do not see in other states. The quality, tone, and zeal of that unit has not varied from one Attorney General to the next. I have noticed no political motivation in the work at any time. Indeed, one constant has been an aggressive desire to get the appellate courts to uphold convictions. The work of the unit is high quality, aggressive, and zealous.

I have sometimes felt that the unit fought too hard to sustain convictions that I believed were procedurally tainted. But I have never doubted the lawyers' professionalism, motivation, nor the quality of their work or the zeal of the lawyers in that unit.

All of us who do appellate litigation worry about missing deadlines. Of course, it is unlikely that even had this petition for review been timely filed that it would have been granted, as the Supreme Court denies the overwhelming percentage of such petitions. Moreover, even if granted, the Supreme Court would still have to reverse the Court of Appeals. So it is misleading and inaccurate to say, as I have heard in the media, that because this petition was filed late that a retrial is required. The retrial is required because the Court of Appeals reversed the conviction. Perhaps the Supreme Court would have granted the petition for review and upheld the conviction, but the odds are they would not. Under such circumstances, the filing of such a petition would only have delayed the retrial of the defendant.

I hope this is helpful.

Yours very truly,

A handwritten signature in black ink, appearing to read "M. B. King". The signature is fluid and cursive, with a large, stylized initial "M" and a long, sweeping underline.

Dear Sir:

This e-mail is in response to yours attached below.

I have been the District Attorney in Crawford County for 11 years now. As the sole D.A. in this county, I can only tell you that during my tenure the Attorney Generals office has been an invaluable resource for me. They have responded to questions, handled all appeals promptly and with expertise, and assisted me in any way conceivably possible.

Speaking for myself, I have absolutely no complaints about the Attorney Generals office whatsoever. Despite the Gogin case, which is extremely unfortunate, they have my complete and unconditional support.

Should you have any questions, or would like to discuss any of the issues I have raised, please do not hesitate to contact me.

Thank you.

Tim Baxter
District Attorney
Crawford County, Wisconsin

From: Scott Horne
Sent: Tuesday, September 04, 2001 09:42
To: 'Gundrum, Mark'
Subject: RE: Inquiry by State Reps. Mark Gundrum and Scott Walker

Mark--thanks for the inquiry. I can honestly say the LaCrosse DA's office has not had the unfortunate experience that the DA's office in Gogin had. The Criminal Appeals Unit has handled our cases well--the attorneys in that unit have handled our cases with skill and dedication. I cannot speak for other offices but our experience has been positive and I have nothing but respect for the attorneys in that office and their competence.

Thank you for your inquiry.

Dear Representative Gundrum:

First, I want to indicate that you can use my name, title and county in referring to or quoting anything in this e-mail. I hope that you don't lend a lot of credence to anonymous e-mails or anecdotal statements by prosecutors who don't have the courage to have their statements and assertions subjected to public scrutiny.

I've been a prosecutor since 1983 and have had numerous occasions to deal with the Criminal Appeals Unit for the Wisconsin Department of Justice. On the whole, they are a hard-working, intelligent, and extremely conscientious group. As I understand from media accounts, what happened in this case (Gogin) is that the Court of Appeals rendered a decision on July 17th, 2001 and granted the Defendant's request for a new trial. There is an absolute jurisdictional requirement that a petition to review of that decision to the Wisconsin Supreme Court be filed within 30 days. Because of a miscalculation of time, (it appears that someone forgot there are 31 days in the month of July) - The deadline for filing the Petition for review fell on Friday, the 17th of August, rather than Saturday, the 18th of August, which then by appellate rule allows filing on Monday, August 20th, the first business day following the absolute deadline.

That's all this case is about. That certainly doesn't rise to an intentional pattern of neglect or a refusal to act on an appeal by the Attorney General's staff. Someone made a mistake, the impact of which can never be accurately assessed or calculated!!! Even if the Petition had been filed, the Wisconsin Supreme Court could have denied it. Even if the Petition had been accepted, the Wisconsin Supreme Court could ultimately have affirmed the Court of Appeals' decision and Gogin would still get a new trial.

Unless there is some "smoking gun" evidence that the Attorney General's Office deliberately failed to file the Petition for Review in order to avoid further litigation of the appeal and send the case back to the Waukesha D.A.'s Office over their objection, your inquiry into this unfortunate circumstance should end.

On a final note, I've had the unfortunate experience of having a misdemeanor OWI (2nd Offense) appeal reversed in District IV Court of Appeals because the Assistant D.A. in my office failed to request an extension of time to file the State's Brief and as a result, was determined by the Court of Appeals, to be negligent in failing to diligently prosecute the appeal. The matter was reversed in June, 2000 when I was out of the office for two weeks to attend the WDAA Summer Conference and take a week's vacation with my

family. Fortunately, I returned and filed a motion for reconsideration of the Court's decision (reversing and remanding the case to the trial court). The Court of Appeals in an unpublished decision, State v. Waddell, Case No.97-CT-155, reconsidered the case and allowed the Green County D.A.'s office to file its brief. They did however, find that I had not acted diligently in supervising my Assistant and assessed \$500.00 in costs to be paid personally by myself and my Assistant as a pre-condition for allowing the appeal to continue. We each paid \$250.00 for the privilege of having the Court of Appeals ultimately deny Mr. Waddell's Appeal of his conviction for 2nd offense OWI and remand him to Circuit Court to serve his 60 day jail sentence. (By the way, he was convicted twice of that offense, First by a six person jury and second by a 12 person jury). I'm not particularly proud of the fact that my ADA screwed up. I should have had a better procedure in place to document the filing dates and deadlines for our Appellate Court Briefs. But things like this happen. They happen when DA's, ADA's and AAG's are overworked and are trying to juggle too many cases, appeals, briefs, trials, etc. at one time. I was fortunate in that the failure to make a briefing schedule was not a jurisdictional problem that was fatal to the appeal. The A.G.'s Office and Waukesha D.A.'s Office were not so fortunate in Gogin.

Maybe the best lesson for the AG's Office is to have one or two AAG's from the Criminal Litigation Unit assist Waukesha County D.A.'s Office at the retrial of the case.

I am sending an e-copy of this response to both Assistant Attorney General Matt Frank and Waukesha Co. D.A. Paul Bucher. As far as I'm concerned they are the only two individuals whose input should count in your inquiry.

Sincerely,

Gary L. Luhman
Green County District Attorney (R)

Representative Scott K. Walker
14th Assembly District
Room 308 North - State Capitol
PO Box 8953
Madison WI 53708

RE: Appellate Unit of the Attorney General's Office

Dear Representative Walker:

It's my understanding that your committee will be meeting tomorrow to review a recent case where time limits were missed by the Criminal Appeals Unit. I write to you to give you my perspective of the Criminal Appeals Unit and its work.

I've been a prosecutor for over 22 years and District Attorney for Barron County for the last 19 years. I've had numerous contacts with the Criminal Appeals Unit over the years. I have uniformly found the attorneys and support staff to be of the highest caliber. I have often received legal advice and research from the unit on cases I was trying in the trial court, which helped me win cases and prepare them for success in the appellate courts. I have found the attorneys incredibly devoted to their jobs and always willing to help out when we have an emergency in the trial courts.

I have never ever heard of the Criminal Appeals Unit missing a time limit and, frankly, was greatly surprised to read the many articles in the newspapers talking about one time limit missed. Frankly, with the many hundreds of cases they handle per year, they should be commended for their ability to do so without missing time limits. A one time mistake does not deserve the kind of publicity and politicization that this has received. I am fearful that all this attention has had a deleterious effect on the staff. I know that they are suffering under overwhelming caseloads as we are and this kind of needless attack on the Criminal Appeals Unit does not help.

If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

James C. Babler
District Attorney

JCB:dmk

Bachman, Ruth

From: Bachman, Ruth
Sent: Wednesday, September 05, 2001 8:11 AM
To: 'Gundrum, Mark'
Cc: 'Rep.Walker@legis.state.wi.us'
Subject: RE: Inquiry by State Reps. Mark Gundrum and Scott Walker

Dear Gentlemen: I would like to respond to your request for negative experiences with the Criminal Appeals Unit of the Attorney General's Office. I have been a prosecutor in Wisconsin for nearly 23 years - as a District attorney, an assistant district attorney and as an assistant attorney general. Currently, I am an assistant district attorney in Barron County.

I am happy to report that my experiences with the attorneys in the Criminal Appeals Unit, throughout my career, has been nothing but positive. While the recent deadline issue is truly regrettable, it is not indicative of any problem that needs to be addressed by the legislature.

We in Wisconsin are truly fortunate to have very talented and dedicated attorneys working for us on our criminal appeals. What many do not know, is that in addition to handling a case load that is quickly becoming overwhelming, the attorneys routinely interrupt their work to provide those of us in the trenches with advice on particular issues that confront us in handling our cases. This advice frequently assists us in avoiding mistakes that could otherwise lead to reversible error.

I have complete confidence in the Criminal Appeals Unit. I am also confident that the Attorney General's staff is taking appropriate steps to ensure that such an error does not occur in the future. What we must all remember too is that all those involved are human beings and thus errors will be made. What I do believe is that our DOJ Criminal Appeals Unit does an exemplary job at keeping those errors to an absolute minimum.

The legislature could in fact have a positive impact on the workings of the Attorney General's Office by increasing the staff of that office. The caseloads have dramatically increased over the years without a commensurate increase in staff. The Criminal Appeals Unit has virtually no control over their case load. Unlike the public defender, they cannot "farm out" cases when they are overworked. Adequate staffing would ensure that the quality of appellate work will not deteriorate.

If you have any questions or if I can provide you with any further information, please do not hesitate to contact me.

Ruth A. Bachman
Assistant District Attorney
Barron County
715-537-6220

In response to your e-mail last week, I am not personally aware of any missed deadlines involving cases from Chippewa County while I have been in this office for the past twelve and half years. I have during the past twelve plus years been the person primarily responsible for all post conviction matters in this office. When the Attorney General's Office has handled felony appeals for our office, I have kept track of the process enough to know that no deadlines have been missed. I am confident that the AG's Office has not missed any deadlines or failed to meet its statutory obligations on any of the appeals arising out of this office.

During my association with this office, I have had to communicate with the AG's Office on numerous occasions. I have generally found the AAGs to be knowledgeable and ready and willing to answer my questions. If the person to whom I am speaking does not know the answer, that person will follow-up to find someone who does know the answer.

If you have any questions, please feel free to contact me.

Respectfully,

Roy La Barton Gay
Asst. District Attorney
Chippewa County
715-726-7741

September 5, 2001

Dear Representatives Gundrum and Walker,

This responds to your solicitation for negative experiences with the Appeals Section of the Wisconsin Department of Justice, which you submit is made in order to determine whether "there is a larger concern with how appeals in that office are being handled and whether solutions can be found for avoiding such problems in the future."

It is curious to me that you solicit every prosecutor in the State for negative information regarding one unit of the criminal justice system, DOJ-Appeals, but apparently have not found an opportunity to address larger issues long ignored by the Wisconsin Legislature. To cite two significant examples of this trend, the Legislature: (1) regularly passes "feel good" penalty enhancements, without regard either to the practical effect of such enhancements, or to the prosecutorial and law enforcement resources necessary to effectuate them, and (2) continues to ignore severe attorney staffing shortages at all levels of the criminal justice system, both on the prosecution and defense sides of the table. If your broad inquiry represents a keener interest in the details of our systems and a desire to improve them, I invite you to review such questions as: unfunded and poorly thought out criminal justice mandates; understaffed prosecutors' and public defenders' offices; and the pressing need to enact the "second half" of Truth-in-Sentencing.

Turning to the substance of your inquiry, my answer is that I have no negative information. I am aware of no missed deadlines, no unprofessional conduct or argument, and no ineffective advocacy on the part of DOJ-Appeals. DOJ-Appeals is staffed by human beings who by necessity work with heavy caseloads, and so I can only assume that mistakes occur there. I have worked in a number of different large, highly professional lawyers' offices, federal, state, and private, and have never known one to be error-free. But I not aware, even by way of hearsay or rumor, of anything like a systemic problem at DOJ-Appeals.

To the contrary, I have found DOJ-Appeals attorneys to be highly professional, knowledgeable, and effective in meeting the heavy demands of their jobs. Supervisors are very experienced, and in my dealings with them have reflected broad knowledge of, and deep commitment to, our system of justice under the rule of law. To cite only one example that I believe is typical, this Office recently faced a massive set of post-conviction motions in a serious child abuse case (State v. Schroedl, Dane County Case No. 00 CF 446, App. 01-1357-CR). Under the routine assignment of responsibilities, it was the obligation of this Office to devote something on the order of a full week's worth of time, perhaps more, by an Assistant District Attorney to fully briefing this set of issues. DOJ-Appeals considered and then accepted my request that the scope and nature of the post-conviction hearings merited assistance from that section. The issues were fully handled in the trial court by DOJ-Appeals, freeing up the ADA to handle her regular caseload of homicides, sexual assaults, and other important prosecutions. I think this example illustrates the willingness of DOJ-Appeals to take on hard assignments so that all available resources can be most effectively used to fight crime.

More generally, I and my colleagues in this Office regularly turn to both DOJ-Appeals and the DOJ Criminal Litigation Section for guidance on points of law that inevitably arise as cases are evaluated, charged, and tried. That advice is uniformly well considered and reliable in my experience.

Again, after you complete your current inquiry, I invite you to use your authority to turn to genuine pressing issues in our criminal justice system.

Best Regards,

Brian W. Blanchard
Dane County District Attorney
Tel.: (608) 266-4211



COUNTY OF KENOSHA

DISTRICT ATTORNEY

Robert J. Jambois
District Attorney

Susan L. Karaskiewicz
Deputy District Attorney

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Representative Mark Gundrum
P.O. Box 8952
Madison, WI 53708

Representative Scott Walker
P.O. Box 8953
Madison, WI 53708

September 4, 2001

Dear Gentleman:

Your recent inquiries to state prosecutors was apparently in response to the recent unfortunate error of an assistant attorney general which resulted in the late filing of a petition for review. No member of this office can remember anything like that ever happening before. I therefore do not believe this one instance suggests the need for any further inquiry.

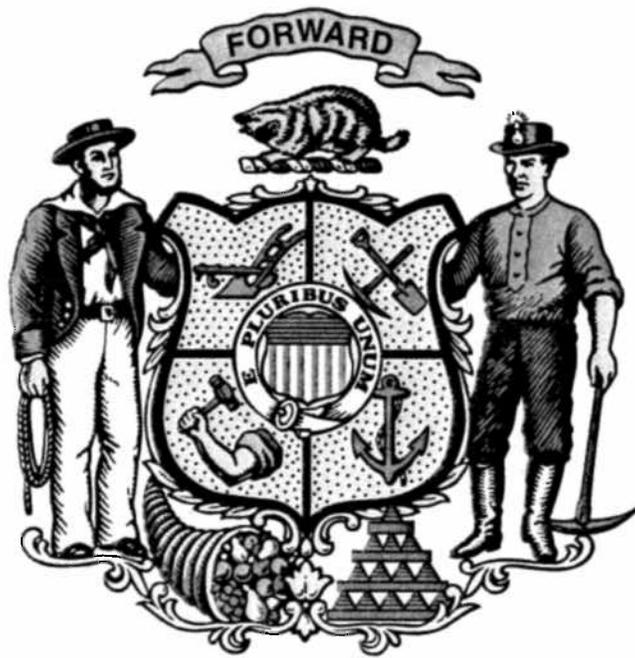
The prosecutors in this office have complete confidence in the staff of the Attorney General's Office. We recognize that they, like us, are operating under the tremendous pressure that naturally attends ever increasing caseloads with no equivalent increase in resources. Nonetheless, the members of this office have been consistently impressed with the very high caliber of advocacy skills possessed by our assistant attorney generals and exemplified in the hundreds of concise, thorough and persuasive briefs which they submit in a timely fashion every year.

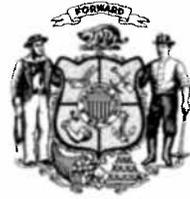
We are also pleased that members of the legislature have sought the opinions and experiences of prosecutors on this issue. We invite you to use the State e-mail system in this fashion whenever you encounter an issue of importance to the criminal justice system. Thank you for providing us this opportunity to express our views on this important subject.

Sincerely,

Robert J. Jambois
District Attorney
State Bar #01002922

RJJ:tab





Chairman
Assembly Judiciary Committee

MARK D. GUNDRUM

STATE REPRESENTATIVE

Capitol Office

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District Office

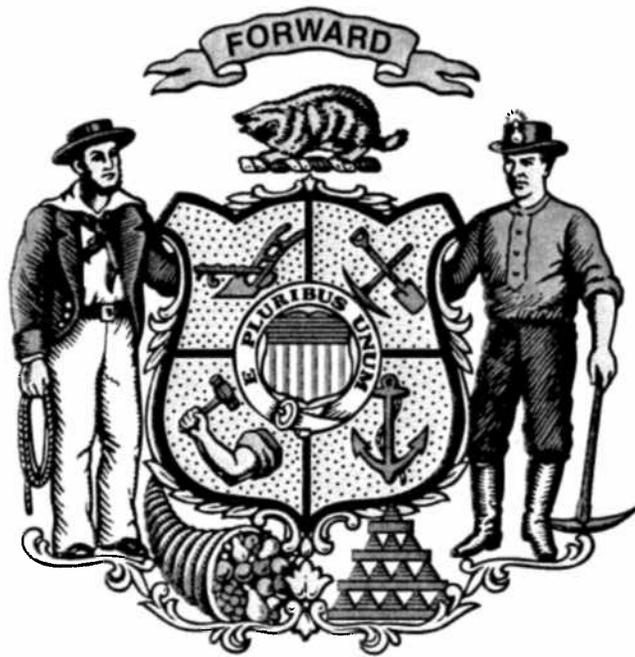
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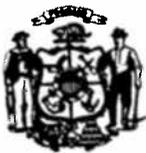
Statement by Assembly Judiciary Committee Chairman Mark Gundrum
Re: Inquiry Into DOJ Appellate Filings
September 5, 2001

Late last week, Representative Scott Walker (R-Wauwatosa) and I sent an e-mail inquiry to the District Attorneys, Deputy District Attorneys and Assistant District Attorneys of Wisconsin, inquiring as to whether or not other offices have experienced problems with appellate documents being filed in an untimely fashion by the Wisconsin Department of Justice. The responses we have received to date, via e-mail and phone, suggest that there is no systemic problem in the Criminal Appeals Unit at DOJ with filing deadlines. While concerns were raised about other issues with the office, for the most part the responses indicated that the Criminal Appeals Unit is doing a fine job and not routinely missing deadlines. Fortunately for the citizens of Wisconsin, the botched deadline in the Thomas Gogin case, while tragic, appears to be a largely isolated incident. It is indeed sad that the Gogin incident occurred, but to date, I have seen nothing which suggests extensive legislative investigation is warranted.

I do, however, hope that Attorney General Doyle will consider instituting a policy which would require that important documents be filed prior to the final day of the deadline. Waiting to file important documents until the last day leaves too much opportunity for tragic consequences, as in the Gogin case. In this case, it was a miscalculated deadline. In the next case, it could be the deadline is missed because person A thought person B was going to file the document and person B thought person A was going to do it. The possibility is too great and the stakes too high to wait until the last day for filing important documents in sexual assault cases.

My suggestion of filing petitions for review in sexual assault cases a week in advance of the deadline was only a starting point for discussion. Twenty-three days is not a "magical" number, but it is a number that focuses on the importance of filing sexual assault documents in a timely manner. The internal policy could instead require that all final drafts of petitions for review in sexual assault cases be handed to Ms. Susan Crawford by the 26th day, with any suggestions by Ms. Crawford then implemented so the document could be filed by the 29th day. Whatever the new policy will be, it should ensure that important documents be filed prior to the last day of the deadline. Procrastination rarely produces the finest work and provides too much opportunity for human error.





STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
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**Testimony before the Assembly Committee on Corrections and Courts
September 5, 2001**

Good morning, Mr. Chairman and members of the Committee. My name is Matthew Frank, and I am the Administrator of the Division of Legal Services of the Department of Justice. With me today is Susan Crawford, the Director of the Criminal Appeals Unit of the Division. We are here to answer your questions about the case of *State v. Gogin*.

Before I proceed, however, first let me again offer our apology for this mistake. As the Attorney General publicly stated when we first learned of this error, such a mistake should never happen. We regret the burden a retrial places on the victim in this case, as well as the additional work it will cause the office of the Waukesha County District Attorney. We have offered the District Attorney whatever assistance from our office he may find helpful to re-try the case.

I also want to correct a misunderstanding about the effect of this missed deadline. This mistake did not set a convicted criminal free. The Court of Appeals decision, issued July 18, ordered that Gogin be given a new trial because of alleged errors his legal counsel committed. The Court of Appeals decision resulted in the defendant's release on bond. The missed deadline prevented the Wisconsin Supreme Court from reviewing that Court of Appeals decision. The Supreme Court does not automatically hear appeals, and we have no way of knowing if the Supreme Court would have been willing to review this decision.

The Criminal Appeals unit of the Wisconsin Department of Justice has a distinguished record of service to the people of the State of Wisconsin. This unit employs 23 attorneys and eight support staff. This small group of attorneys has among them some of the most talented and experienced criminal lawyers in our state. In all, they bring a total of almost 250 years of criminal appellate experience to their work. Many of them are career members of this area of practice, some of whom have served under four Attorneys General. Three current members of the unit have handled cases before the United States Supreme Court.

The unit is responsible for all appeals of felony convictions obtained by District Attorneys throughout Wisconsin. Our attorneys have won landmark decisions in federal and state court. They work as part of a non-partisan team with the prosecutors from all over this state to ensure that justice prevails in the appellate process. I have distributed to you a sample of letters of commendation the unit's attorneys have received from district attorneys around the state.

Page 2.

Since fiscal year 1995 alone, this unit has been responsible for approximately 4,000 criminal cases in the Wisconsin Courts of Appeals. In addition, these same attorneys have either filed or responded to approximately 2,400 petitions for review in the Wisconsin Supreme Court. Of those petitions for review, over 200 were granted, which meant they were fully briefed and argued before the Wisconsin Supreme Court. In addition to this work, the unit's attorneys have handled 500 habeas cases in federal court.

I have also distributed to each of you a copy of the written report prepared by Assistant Attorney General Crawford about the circumstances that resulted in this mistake. The bottom line is that we have a docketing and calendaring system designed to prevent mistakes, which has been maintained for many years and has worked well. It is a system that relies on the independent calculation of deadlines by a minimum of two people. Nonetheless, the system did not work in this particular case because two people, who calculated this deadline independently of each other, *both* made mistakes. The lead secretary who calculated this deadline made one type of error and the attorney responsible for filing the petition made a different error. The reality is that each person, working independently of the other, came up with the same, erroneous deadline. Had the mistakes resulted in a discrepancy, it would surely have been caught. A follow up review of all calendared deadlines in the unit showed that there were no other miscalculations.

I also want to emphasize that nothing in our investigation revealed any conduct by any of the people responsible for this case which demonstrated a lack of concern for meeting what they sincerely believed was the correct deadline. On the contrary - the individuals involved calculated and double-checked their work. The attorney responsible worked during the weekend on the case and personally delivered the petition to the court to make sure it was filed.

Despite the fact that the unit's former calendaring system worked well for thousands of cases, we have already implemented additional safeguards to help ensure such an error does not happen again. The unit has discontinued use of the calendaring method that resulted in the attorney's miscalculation of the date in this case and added two additional levels of independent calendar review. In the future, all deadlines will be checked *twice* at both the lead secretary and at the individual attorney level. This means the unit will have four people independently calculating these deadlines in the future.

Effective, efficient, quality case management will continue to be our highest priority at the Department of Justice. I will be happy to try to answer any questions you may have. Thank you.



Gilbert, Melissa

From: Walker, Scott
Sent: Wednesday, September 12, 2001 2:41 PM
To: Frank, Matt J.
Cc: Sappenfield, Anne; Gilbert, Melissa; Crawford, Susan M.
Subject: Appeals cases

Importance: High

Matt and Susan,

Thank you once again for appearing before our committee last week. As discussed at the hearing, I am interested in the 30 day time limit for the filing of papers in appeals cases before the state Supreme Court. Specifically, I would like some feedback on whether it is appropriate to move back the 30 days listed in the statutes or to create a new petition process to the court for an extension in the paperwork for an appeals case.

In addition to feedback from you and your department, I am asking our Legislative Council attorney to review this subject and present me with some options and the possible positive and negative consequences of these actions.

Thank you.

Scott Walker

State Representative - Wauwatosa
Scott.Walker@legis.state.wi.us
608/266-9180
www.RepScottWalker.com



Gilbert, Melissa

From: Frank, Matt J.
Sent: Thursday, September 13, 2001 1:00 PM
To: Walker, Scott
Cc: Sappenfield, Anne; Gilbert, Melissa; Crawford, Susan M.
Subject: RE: Appeals cases

Dear Rep. Walker,

We appreciate the opportunity to provide input for a possible change to the 30 day jurisdictional time limit for petitions for review. As you point out, there are a number of ways this could be approached. We would like to give this some additional thought and will get back to you next week with our feedback.

Thought I'd mention other possible sources of input might be the state bar (they have an appellate practice section), the Judicial Council (next scheduled meeting is Sept 21), the public defender- appellate office (Marla Stephans, Director), etc.

As I mentioned when we discussed this in the hearing last week, we would be happy to work with you on this issue.

Matt Frank

Matthew J. Frank
Assistant Attorney General
Administrator, Division of Legal Services
Wisconsin Department of Justice

phone: 608-266-0332
fax: 608-267-2223
e-mail: frankmj@doj.state.wi.us

-----Original Message-----

From: Walker, Scott
Sent: Wednesday, September 12, 2001 2:41 PM
To: Frank, Matt J.
Cc: Sappenfield, Anne; Gilbert, Melissa; Crawford, Susan M.
Subject: Appeals cases
Importance: High

Matt and Susan,

Thank you once again for appearing before our committee last week. As discussed at the hearing, I am interested in the 30 day time limit for the filing of papers in appeals cases before the state Supreme Court. Specifically, I would like some feedback on whether it is appropriate to move back the 30 days listed in the statutes or to create a new petition process to the court for an extension in the paperwork for an appeals case.

In addition to feedback from you and your department, I am asking our Legislative Council attorney to review this subject and present me with some options and the possible positive and negative consequences of these actions.

Thank you.

Scott Walker

State Representative - Wauwatosa
Scott.Walker@legis.state.wi.us



Gilbert, Melissa

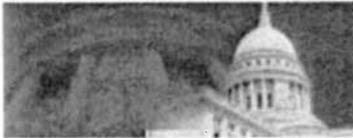
From: Junck, Linda
Sent: Monday, September 17, 2001 4:48 PM
To: Gilbert, Melissa

September 17, 2001

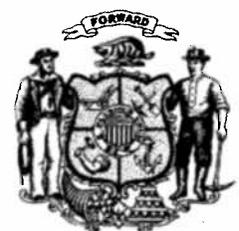
Missy,

Rep. Skindrud has been scheduled for an outpatient medical procedure on Wednesday, September 19, 2001 so he will be unable to attend the Corrections and the Courts Committee hearing that day.

Linda Junck
Legislative Aide



WISCONSIN STATE LEGISLATURE



Gilbert, Melissa

From: Janssen, Andy
Sent: Tuesday, October 30, 2001 4:38 PM
To: Gilbert, Melissa
Subject: RE: Assembly Corrections Hearing

Missy,

Pedro will be out of town on this day.

Andy

-----Original Message-----

From: Gilbert, Melissa
Sent: Wednesday, October 24, 2001 4:55 PM
To: Kiesow, John; Greer, Rose; Pederson, Russell; Adam Raschka; Andy Janssen; Anne Sappenfield; Anne Thompson; Bob Karius; Bob Margolies; Carol Owens; Dagny Coe; Daniel Lorentz; David de Felice; Donald Friske; Ed Eberle; Glenn Wavrunek; Greg Reiman; Larry Balow; Linda Junck; Linda Narveson; Mark Pocan; Nicole Boryczka; Pedro Colon; R.J. Pirlot; Rick Skindrud; Robert Suls; Scott Suder; Scott Walker; Spencer Coggs; Tim Gary
Subject: Assembly Corrections Hearing

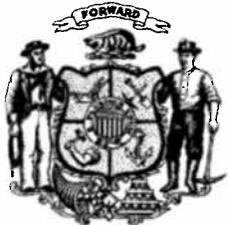
Please plan for an exec on AB 170 at some point next week. We are simply waiting to be assigned a day. In the meantime, we are extendng jurisdiction over CR 01-045 for another 30 days...

<< File: Nov14.2001.doc >>

Melissa Gilbert
Research Assistant
Office of Rep. Scott Walker



WISCONSIN STATE LEGISLATURE



Gilbert, Melissa

From: Coe, Dagny
Sent: Friday, November 09, 2001 1:58 PM
To: Gilbert, Melissa
Subject: Nov 14

Hello Melissa,

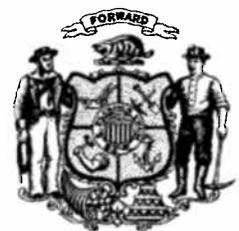
I am writing to inform you that Gregg is registered to be at an out of state conference related to Health Care issues on Nov 14. I hope he may be excused from the hearing.

Sincerely,

Dagny, Legislative Aide



WISCONSIN STATE LEGISLATURE



Gilbert, Melissa

From: Gary, Tim
Sent: Monday, November 12, 2001 3:51 PM
To: Gilbert, Melissa
Subject: Please...

Please excuse Representative Friske from the Committee hearing on Wednesday November 14th at 10 AM. He has made prior arrangements in his schedule that may not be altered. Thank you for your assistance in this matter.

Timothy Gary

Legislative Assistant for
Representative Donald Friske (35th)
312 North Capitol
PO Box 8952
Madison, WI 53708-8952
Toll Free: (888) 534-0035
(608) 266-7694
FAX: (608) 828-3635
Email: Tim.Gary@legis.state.wi.us

www.FriskeNet.Net



Gilbert, Melissa

From: Coe, Dagny
Sent: Monday, January 07, 2002 12:59 PM
To: Gilbert, Melissa
Subject: RE: Assembly Corrections hearing

I cannot believe it!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! Gregg is going to be out of state at a health conference! So sorry! May he have an excused absence? THANKS! Have a special new year in 2002!

-----Original Message-----

From: Gilbert, Melissa
Sent: Monday, January 07, 2002 11:47 AM
To: Nussbaum, Jody; Krieser, Steve; Margolies, Robert S. DOC; Davis, Stan W.; Richard, JoAnna M.; Adam Raschka; Andy Janssen; Anne Emerson; Anne Sappenfield; Bob Karius; Bob Margolies; Carol Owens; Dagny Coe; Daniel Lorentz; David de Felice; Donald Friske; Ed Eberle; Glenn Wavrunek; Greg Reiman; Larry Balow; Linda Junck; Linda Narveson; Mark Pocan; Nicole Boryczka; Pedro Colon; R.J. Pirlot; Rick Skindrud; Robert Suls; Scott Suder; Scott Walker; Spencer Coggs; Tim Gary
Subject: Assembly Corrections hearing

A hard copy of this notice will be delivered to committee members...

<< File: Jan16.2002.doc >>



DNA concerns (meeting w/ DOJ, courts, Burke office, LAB: RR)

Long-term Fiscal impact

① Notification issue

- ↳ think should be done by DOJ, not clerks
- ↳ streamline w/ current 980 notification requirements

② Preservation of evidence

- ↳ currently operate under Supreme Ct. rule
(keep one year $\frac{1}{2}$ then give notice of return) ^{to offering party}
- ↳ Keep evidence in storage room \rightarrow not temperature-controlled, etc.
- ↳ nobody wants to store evidence indefinitely
- ↳ require defendant to file motion to preserve evidence or give DA, judge, etc., ability to force hearing
- ↳ only require pres. of evidence prior to PCR testing

③ Definition of biological material

- ↳ need only relevant evidence (extraction, not entire mattress, etc.)

④ Admissibility of evidence

DOJ will talk to Norm Gahn



ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

AGENDA

Wednesday -- Feb. 27, 2002

11 a.m.

Room 400 NE

~~I.~~ Call to Order

~~II.~~ Roll Call

~~III.~~ Public Hearing

~~A.~~ **Assembly Bill 810** (*Suder/Welch*)

Relating to: transporting people to visit state prison inmates.

~~B.~~ **Assembly Bill 738** (*Johnsrud/ M. Meyer*)

Relating to: the residence of child sex offenders

~~C.~~ **Assembly Bill 852** (*Walker*)

Relating to: awards for crime victims and their families, persons witnessing certain crimes, and children witnessing acts of domestic violence.

~~D.~~ **Assembly Bill 851** (*Walker*)

Relating to: escapes by persons on probation, parole, extended supervision, or aftercare supervision and providing penalties.

~~IV.~~ Executive Session

~~A.~~ **Assembly Bill 810** (*Suder/Welch*)

~~B.~~ **Assembly Bill 564** (*Leibham/S. Fitzgerald*)

~~C.~~ **Assembly Bill 735** (*Underheim/George*)

~~D.~~ **Assembly Bill 729** (*Walker/Jauch*)

~~E.~~ **Assembly Bill 852** (*Walker*)

~~V.~~ Adjournment



The Criminal Appeals Unit has been widely praised by District Attorneys from every corner of the state and from small and large counties. The following are some examples.

Date
?

Outagamie County:

"Great work-as usual, from our Appeal Unit." Lori Eidemanis, ADA (12-8-1998)

Kenosha County:

"I know that in my years of experience as a prosecutor, I have never seen a case appealed, in mid-trial from the trial court to the Supreme Court. I was impressed with your staff's command of the legal issues involved and with Ms. Burke's ability to keep everybody on track during the course of the moot court discussion.... I believe the successful result that we obtained can be attributed to the exceptional abilities of your staff." Robert Jambois, DA (2-26-1999)

"I have just had an opportunity to review the brief which you filed in State v. Douglas Bourgue. I was very impressed with the caliber and clarity of your detailed analysis. It is one of the best appellate briefs I have ever read. That is quite an accomplishment since I have come to expect extraordinarily high quality work from the Wisconsin Attorney General's Office. I recognize that you and your colleagues are confronted with a crushing workload. I want you to know how much us prosecutors in the trenches sincerely appreciate the fine work that you do." Robert Jambois, DA (7-16-1999)

Waukesha County:

"I just wanted to let you know how grateful I am for your efforts in the Oswald appeal. I know you have many appeals and I know you get very busy, but I appreciate all of the personal attention and efforts you put into this case." Paul Bucher, DA (12-10-1999)

"I just finished reading the brief you prepared and filed on the Voss case, and I am writing to thank you for all of your hard work. The brief is very well written, and I intellectually, legally, and emotionally, support your arguments. I know preparing a 50 page brief is no small task, and I really appreciate your efforts." Stephen Centinario, Jr. DDA (2-2-1996)

Milwaukee County:

"As you might remember, I represented the State at Mr. Soloman's trial. Thanks for the copy of your brief. I read it and I think it's great. I'm going to keep it around in case I run into those issues again. Thanks for the effort." Mark Saunders, ADA (6-4-2001)

Washington County:

"I just read your brief in the above case (State v. Bush) which originated in Wash. County. Thank you so much! It was terrific. I'm glad you're on our side. On behalf of the family of the victim and my office, thanks again." Todd Martens, DA (2-24-2001)

Fond du Lac County:

"Congratulations! I am happy to see that the Court of Appeals affirmed Mr. Black's conviction. Thank you for your work on the appeal. It's also good to see that the decision was recommended for publication so your work will impact on other courts as well. Thanks again." Charles Schneider, DDA (7-13-2000)

"Thank you for the copy of your brief. I stand in awe at the breadth of your knowledge and research and the fine writing by which you put it into words on a page. Thank you for your outstanding work". Charles Schneider, DDA (3-17-2000)

"Thank you for the copy of your brief. You are again to be heartily commended for the great breadth of your research, the organization of your arguments and the clarity and focus of your writing. As impressive is the fact that you only had a few short weeks to write and file it, given all your other responsibilities. I hope that the Court will see the sense in your arguments and act appropriately." Charles Schneider, DDA (8-21-2000)

Portage County:

"Thank you for the time you and your staff spent with ADA Brian Formella and me in helping us to prepare for the oral arguments before the Fourth District Court of Appeals. The time you spent preparing for the moot court and attention to the details in our case was reflected in the excellent questions you and your staff presented and greatly enhanced the State's presentation before the Appellate Court. The solid advice we received was helpful as well." Thomas Eagon, DA (3-17-2000)

Jefferson County:

"Thank you so much for your work in the above-referenced case (State v. Lindholm). It makes life so much simpler for us and for prosecutors around the state, to be able to introduce the driving abstract in order to prove prior convictions at prelim. It also takes a huge headache off of our staff who would have to do the real work in trying to chase down, under tight time constraints, the judgments of conviction that would have to take the place of the certified abstract. Thanks always and keep up the good work." David Wambach, DA (1-26-2001)

"I sincerely endeavor to never lose sight of the complexity of the work done by the fine lawyers in the appellate division. I understand the crush of work upon them, as well as the time limits that they labor under. There are no small victories..." David Wambach, DA (7-21-2000)

Dane County:

"I just got a copy of the brief you filed and wanted to thank you. It may seem like cranking out sausage to you, but not to me. Suffice it to say, I'm impressed by your sorting through Reimann's sometimes tortured logic and confusing presentation, in the context of the previous post-conviction litigation." Judy Schwaemle, DDA (under Diane Nick's term)(5-28-1998)

Winnebago County:

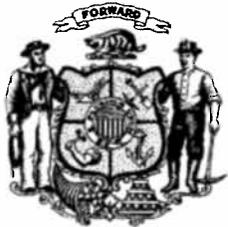
"I received your Appellate brief for the above-mentioned matter (State v. Prokopios). I am writing to thank you for all the work that you have done for this case. I was impressed with your research, writing and reasoning. This case is not only important for the state of the law in Wisconsin, but especially for Marc Weber, the victim who was attacked by the defendant and sustained over \$10,000 of medical bills. If available, I will attempt to attend the oral arguments. Thanks for your help and impressive job on the brief." John Jorgensen, ADA (11-24-1997)

Brown:

"Kathy, ...thank you for the help!!! A very professional job!!!" Steve Madson, ADA (4-4-2001)



WISCONSIN STATE LEGISLATURE



Late appeal on rape case isn't first such mistake

MJS 8/30/01

Attorney General Jim Doyle asserted last week that when his staff this month blew the appeal of a rape case on a technicality, the mistake was unprecedented.

"The attorney general's office handles thousands of legal cases each year," Doyle said in a written statement. "This is the first time we know of that the system has failed."

Oh, how soon we forget.

Doyle, a gubernatorial wannabe, has been apologizing profusely while keeping his personal distance after his shop recently bungled a Waukesha

rape case by filing the appeal one day too late.

But contrary to his claims, Doyle's office flubbed an appeal on a filing miscue at least one other time — and that one was a doozy, also. The error had statewide impact since it opened the door for Wisconsin's Indian gaming explosion.

Back in 1991, U.S. District Judge Barbara Crabb ruled that because voters approved a constitutional amendment approving a state lottery, the governor had to negotiate agreements with tribes to run a range of casino games. The decision came at a time when Indian casinos typically



SPIVAK & BICE

were hole-in-the-wall operations with unclear legal standing.

The state's legal eagles responded to Crabb's decision by quickly firing off an appeal.

Too quickly, it turns out.

A few months later, when the state's lawyers arrived at the appellate court in Chicago to plead the merits of their case, they were unceremoniously told to shut up. The judges ruled that

Please see **SPIVAK & BICE, 2A**

Casino appeal mishandled

SPIVAK & BICE, From 1A

they couldn't hear the case because Doyle's team had filed the appeal at the wrong time.

According to federal rules then in place, the state improperly filed its appeal while a motion was pending before Crabb. The appeal should have been filed within 30 days after she ruled on that motion.

The lawyers didn't realize their error until long after the 30-day clock had run out.

The result: Doyle's staff unintentionally helped turn Wisconsin's then-fledgling casino industry into one that now wins hundreds of millions of dollars annually.

"It was a good thing for me," **Bruce Greene**, the attorney who represented the Lac du Flambeau tribe in the case, recalled this week. "It was their problem, not mine."

Had the appellate court heard the case, there is, of course, no way of knowing who would have won. When a similar question was tried on the West Coast, an appellate court issued a ruling much narrower than Crabb's.

"It was a kind of a 'Who knows?' " Greene said. "I was thinking we had a slightly better than a 50-50 chance of prevailing."

Doyle flack **Mitch Henck** admitted Wednesday that the wording in Doyle's Friday statement about the rape appeal was "a little unfortunate" and "sloppy."

What Doyle meant to say was that he didn't think, with the exception of that case, his office had ever dropped the ball on any appeal of a criminal case, Henck explained.

So the casino case represents the only fumble of a civil case appeal by Doyle, right?

"God, I hope so," Henck said.

Later, he called to amend his earlier comments.

Losing the casino case on procedural grounds is completely different than the goof-up in the rape appeal, he claimed.

In the gambling case, the AG's office thought it filed its appeal at a proper time because state lawyers didn't think the Lac du Flambeau motion pending before Crabb required the state to wait before filing its appeal. It was a legal, not a procedural, question, Henck pleaded.

Greene agreed the situation in the casino case was confusing, noting that other attorneys in unrelated cases had made the same mistake.

Still, he said, the prudent thing would have been for Doyle's minions to have filed a second appeal long before they made their ill-fated trip to Chicago. Greene, of course, kept that bit of advice to himself in 1992.

"I certainly wasn't going to practice law for the state and remind them what they had to do."



MSS 12-25-2001

Plea deal lets rapist remain free

Delafield man convicted on reduced
charge, sparing victim a second trial

By **LISA SINK**

of the Journal Sentinel staff

Waukesha — Months after the state attorney general's office botched an appeal in a rape case, the defendant has accepted a plea deal that allows him to remain a free man while sparing the victim a second trial.

Thomas Gogin, who had served about 21 months of a seven-year prison term before a state appeals court overturned his conviction and sentence, will serve no more prison time, under a plea agreement quickly and quietly approved Friday by Waukesha County Circuit Judge Michael Bohren.

Gogin, 60, a Delafield businessman, was credited for time served and sentenced to five years' probation after pleading no contest to a single, reduced charge of felony third-degree sexual assault. He originally was convicted of false imprisonment and second-degree sexual assault.

State Rep. Mark Gundrum (R-New Berlin) called the plea deal an "unfortunate" result of the attorney general office's blunder in filing a day late its appeal of a 2nd District Court of Appeals ruling that had overturned Gogin's original conviction.

The state Supreme Court dismissed the state's appeal as untimely, and the case was sent back to Waukesha County for a new trial.

"Its unfortunate that a convicted rapist will now walk free because of the missed appeal dead-

Please see **APPEAL, 5B**

Waukesha judge OKs deal that avoids new rape trial

APPEAL, From 1B

line," Gundrum said.

"Hopefully, the attorney general's office has put safeguards in place to make sure that this never happens again, because Wisconsin obviously can not afford to keep releasing convicted rapists."

State Sen. Mary Lazich (R-New Berlin), who urged an audit of Doyle's office after the missed deadline, questioned why a plea agreement was offered.

"My goodness sakes, it baffles the mind," she said.

Deal defended

But District Attorney Paul Bucher called the plea deal "the best we could do," given the circumstances.

"We have a rape victim who has had to go through some very difficult times during the trial, not to mention the appeals," Bucher said. "(Gogin) has been convicted, he has been held responsible for his criminal conduct. He did prison time.

"We're just glad that she could get this over with."

Attorney General James Doyle could not be reached for comment Monday. But Susan Crawford, who heads his office's criminal appeals unit, said Monday that she has implemented new procedures for her staff to en-

sure that no other deadlines get missed.

When an appellate court rules against the state, Crawford's staff now has 10 days to make a decision on whether to ask the Supreme Court to review the case, Crawford said.

Gundrum said of the 10-day review deadline: "Well, that's some improvement. It still doesn't prevent human error — so you don't risk somebody stuck in a blizzard or going to the wrong courthouse."

Assistant Attorney General Kathleen Ptacek, who filed the appeal late after she miscalculated the court system's 30-day deadline, received a written reprimand.

The victim, 36, could not be reached for comment Monday. She previously has expressed her "utter disgust" with the missed deadline and the reversed conviction, saying such events may discourage rape victims from pressing charges against their aggressors.

Avoiding a new trial

Gogin's attorney, Stephen Glynn, said his client also did not want to endure another trial and risk the possibility of returning to prison.

In a jury trial in the fall of 1999, a jury found Gogin guilty of false imprisonment and second-degree sexual assault.

Gogin, a church lector and religious education teacher, testified at the trial that he had had consensual sex with a female friend and fellow horse rider at his Ottawa farm in August 1998.

But the woman testified that Gogin had raped her, at one point holding a spur to her arm. At a sentencing packed with supporters on both sides, Waukesha County Circuit Judge J. Mac Davis said he believed that Gogin had sexually assaulted the woman.

Davis sentenced Gogin to seven years in prison, followed by three years' probation. Davis also ordered Gogin to pay a \$20,000 fine.

The appeals court, however, reversed the conviction and sentence, saying Gogin's trial attorney, Leonard Adent, had been ineffective.

On Friday, Judge Bohren imposed but stayed a 50-month prison term for the conviction on the reduced charge. He ordered Gogin serve the maximum five years' probation, register as a sex offender and have no contact with the woman, her family and a horse riding park where she rides.

The \$20,000 fine imposed after the first conviction also was dropped, and Gogin will be refunded the money he paid under the plea agreement approved by Bohren.



Rape case appeal misses deadline

State attorney general's office miscalculates due date for paperwork

By LISA SINK
of the Journal Sentinel staff

Waukesha — A woman who convinced a jury a Delafield man had raped her — but later saw that conviction overturned — was dealt another blow Tuesday when the state attorney general's office missed its chance for a final appeal.

While the office wrote a 20-page petition asking the state Supreme Court to review the Wisconsin Court of Appeals' reversal of Thomas Gogin's rape

conviction, the document was filed one day too late.

The Supreme Court dismissed the petition Monday as being untimely.

Waukesha County Assistant District Attorney Debra Blasius, who successfully prosecuted Gogin and had the conviction reversed because of allegations Gogin's attorney was ineffective, was upset when told of the bungled filing.

"I can't even put into words how disappointed I am that the

time limit was missed on something this important," Blasius said. "I can't believe this."

Susan Crawford, director of the attorney general's office's criminal appeals unit, said, "We feel really terrible about it."

"All I can tell the DA's office and the victim is that we will put whatever resources we have in assisting them in retrying this case and making sure that justice is achieved," she added.

Crawford said that it was not one but three employees in her

office that miscalculated the filing deadline. Assistant Attorney General Kathleen Ptacek, who wrote the appeal; her secretary; and the office's lead secretary.

None will be disciplined, she said.

"This is a very conscientious attorney who did her level best" to file the appeal, Crawford said of Ptacek. "This appears to have been the result of just a simple miscalculation, human error."

Crawford said her office calculates hundreds of appeal dead-

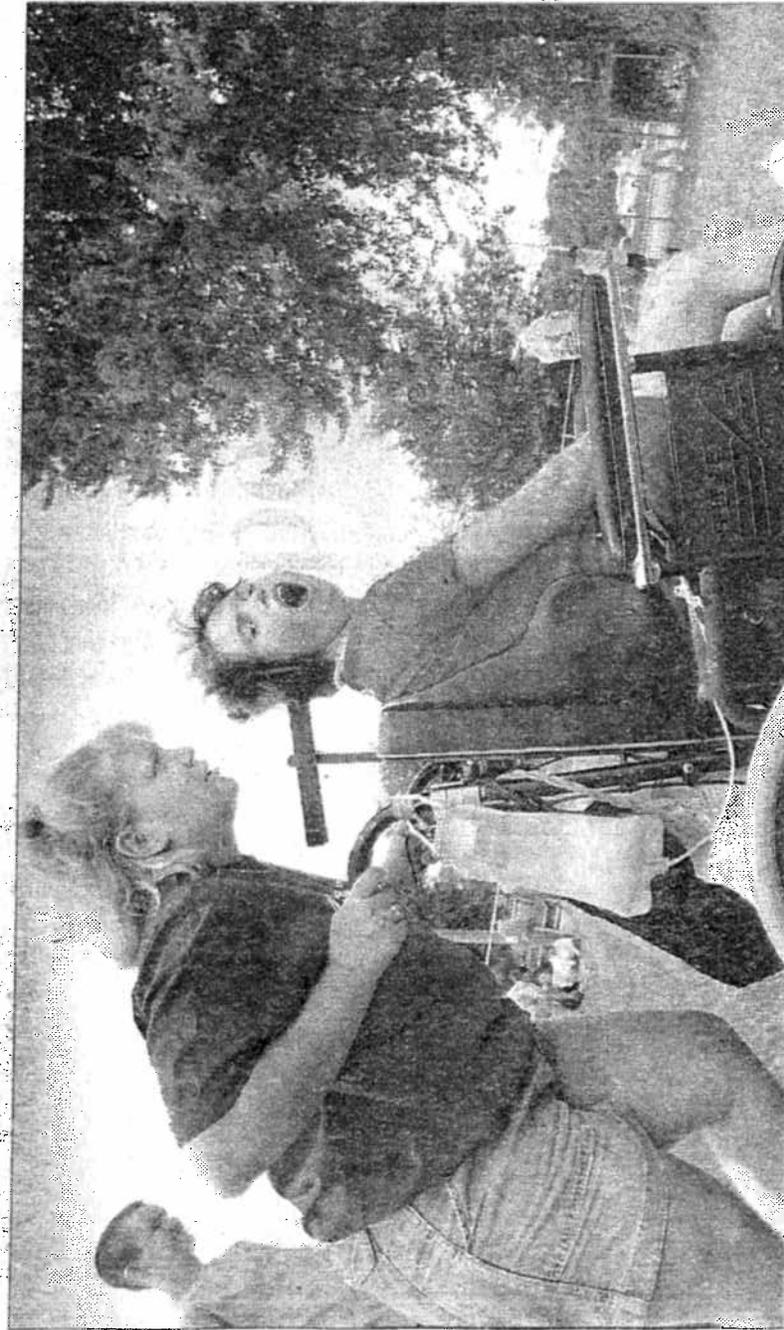
lines every month.

"This has never happened before," Crawford said.

She said her office will review its procedures to make sure another mistake never closes the courthouse door for a victim.

The District II Court of Appeals panel in Waukesha issued its decision July 18, overturning Gogin's conviction and seven-year prison sentence and ordering a new trial.

Please see **COURT, 4W**



Doctor settles case

Date ??

Rogers Memorial psychiatrist admits he crossed line with former patients

By LISA SINK
of the Journal Sentinel staff

Waukesha — An Oconomowoc psychiatrist accused in court of having a sexual relationship with two former patients — one of whom he married — has reached a settlement that would suspend his medical license for three years.

The settlement means a trial set to begin

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Appeal misses deadline

COURT, From 1W

The attorney general's appeal to the Supreme Court was filed Aug. 20. It was due Aug. 17.

Asked how three employees could make the same mistake, Crawford said it was possible that they mistakenly thought the deadline was Aug. 18, a Saturday. In that case the paperwork can be filed on the following Monday, she said.

"I can't even put into words how disappointed I am that the time limit was missed on something this important. I can't believe this."

Debra Blasius, Waukesha County assistant district attorney

Or the three may have erroneously calculated mailing time, she said. What caused the error may never be known because of faulty memory by workers involved, she added.

Gogin's appellate attorney, James Shellow, was out of the country and unavailable for comment Tuesday.

The woman whose complaint prompted the case could not be reached for comment late Tuesday; she has previously declined to comment.

Gogin, 60, testified at the trial in fall 1999 that he had consensual sex with the woman, a female friend and fellow horse rider, after a rodeo event Aug. 16, 1998.

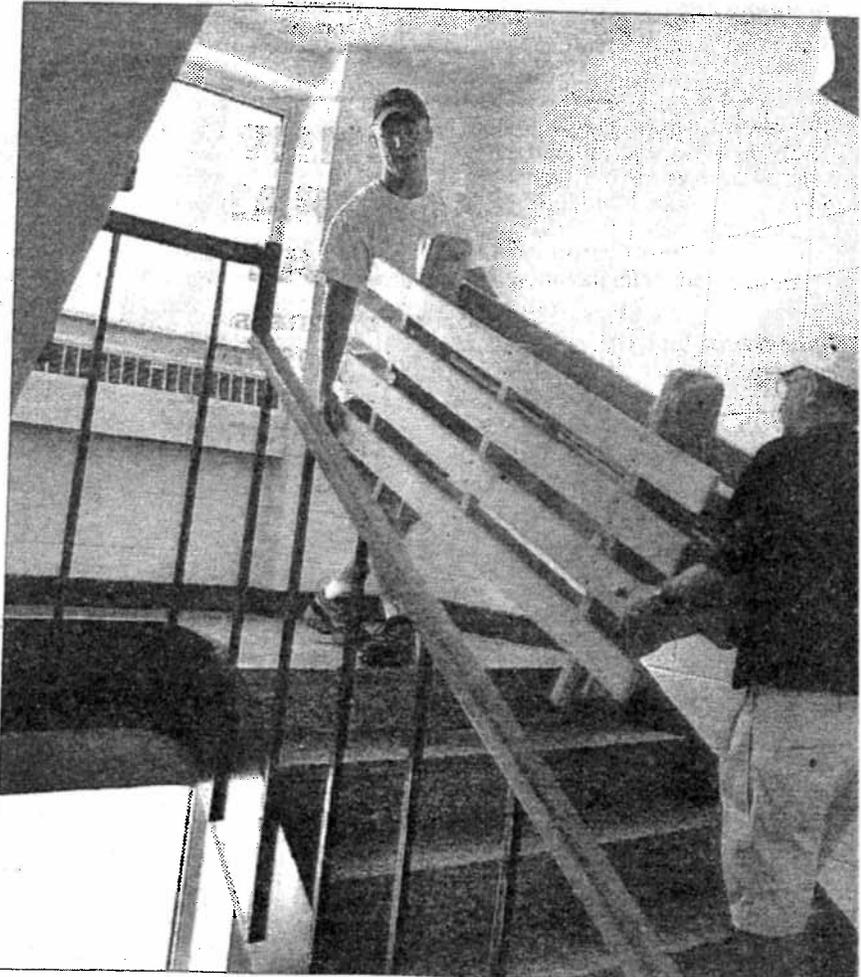
The woman testified that Gogin forcibly assaulted her, holding a spur to her arm at one point.

A jury found him guilty of false imprisonment and sexual assault, and Circuit Judge J. Mac Davis imposed a seven-year prison term, three years of probation and a \$20,000 fine.

Last month, the Appeals Court ordered a new trial, ruling that Gogin's trial attorney, Leonard Adent, had been ineffective for failing to call a witness and subpoena a phone record.



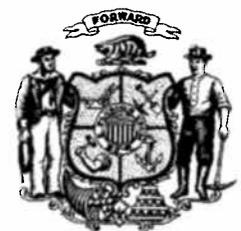
Doreen and Mike Poremba of Roselle, Ill., unpack their car Tuesday as they move into the residence halls at Carroll College for their son, Michael, as student-athletes move into the residence halls. The Porembas' son is a football player, and football practice started this week, as the rest of the students will move in over the Labor Day weekend. Classes



Andy Stickel (left) and his father, Frank, carry items for Andy's room up the stairs at Carroll College. Andy Stickel is on the football team.



WISCONSIN STATE LEGISLATURE



Probation revocation sought for offender

State missed appeal deadline after rape conviction overturned

By LISA SINK
of the Journal Sentinel staff

Waukesha — A Waukesha County sex offender who was released from prison after the state attorney general's office missed an appeal deadline may be going back to prison for his own mistakes.

Thomas Gogin, whose rape conviction was overturned by the Wisconsin Court of Appeals and who pleaded guilty to a reduced sex charge to avoid a second trial, has violated his probation, the state Department of Corrections alleges.

Because he had a firearm, knives, ammunition and sexually explicit material in his Delafield home, the department has moved to revoke Gogin's probation. At a June 18 hearing, officials will ask an administrative law judge to send Gogin back to prison for 50 months.

Until the hearing, Gogin, 61, remains locked up at the Milwaukee County Secure Detention Facility. He has been in jail since April 11, the day his probation agent visited his home

and found illegal items, said Avery Gould, a state Department of Corrections field supervisor.

Waukesha County District Attorney Paul Bucher called the latest developments good news for the victim.

"I guess there is justice after all," Bucher said. "But it still doesn't do much for the pain and suffering that the victim had to go through."

State Rep. Mark Gundrum (R-New Berlin), who had been critical of the attorney general's office for filing its appeal of the overturned conviction one business day too late, also was pleased.

"Really? That's good," Gundrum said. "It's good to see justice will be done despite the error by the attorney general's office."

Assistant Attorney General Randy Romanski said only: "If he violated the conditions of his release, then he should serve time."

The victim, who testified during the trial that Gogin sexually assaulted her after a horse riding event in August 1998, declined to comment.

Gogin's attorney, Stephen

...cont. from prev. page

Glynn, did not return a call seeking comment.

Gogin claimed innocence

Gogin has maintained his innocence despite his conviction. He testified at his 1999 trial that he and the woman, 36, had had consensual sex.

She testified that Gogin raped her, at one point holding a spur to her arm.

A jury found Gogin, a church lecturer and religious education teacher, guilty of false imprisonment and second-degree sexual assault. He was sentenced to serve seven years in prison.

But last July the Court of Appeals panel in Waukesha overturned the conviction and sentence, saying Gogin's trial lawyer had been ineffective.

Assistant State Attorney General Kathleen Ptacek prepared a lengthy brief asking the state Supreme Court to reinstate the conviction. But she filed it one business day too late, prompting the high court to dismiss it.

That left Waukesha County prosecutors and the victim to decide whether to hold a new trial.

They chose instead to reach a plea deal with Gogin, who pleaded no contest on Dec. 21 to a reduced charge of third-degree sexual assault.

Waukesha County Circuit Judge Michael Bohren imposed but stayed a 50-month prison term and instead placed Gogin on

probation for five years with no additional incarceration.

If an administrative law judge agrees that Gogin's probation should be revoked, Gogin would automatically serve the stayed 50-month prison term, Gould said.

State reports allege that on April 11 a probation agent visited Gogin's home and found hidden under his sofa an unloaded shotgun and three hunting knives.

Also found were "numerous boxes of shotgun shells" and "a number of posters and pictures of sexually explicit material," according to the reports.

Beer also was found in other outbuildings on Gogin's Delafield farm, Gould said.

As a convicted felon, Gogin is barred from having a gun. And weapons, alcohol and sexually explicit material are banned under his rules of probation, Gould said.

There were wall hangings with "drawings depicting women in a dehumanizing manner," he said. The agent took off the wall "a picture that was torn from a pornographic magazine," he added.

Gould argued that the violations were serious enough to warrant revocation as opposed to other punishments short of prison.

"He was convicted of a serious sexual offense, involving the use of alcohol and a spur which was used as a weapon," Gould said. "Within a few months of his supervision, we again find on his property alcohol and weapons which would preclude an alternative (sanction) in the community."