

2003 DRAFTING REQUEST

Bill

Received: 07/15/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: Jay

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - district attys
Criminal Law - procedure
Munis - miscellaneous
Counties - miscellaneous
Courts - miscellaneous

Extra Copies: rlr
rpn

Submit via email: YES

Requester's email: Sen.Hansen@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Agreements not to prosecute or to amend or dismiss charges

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 07/21/2003	kgilfoy 07/28/2003		_____			
/1			jfrantze	_____	amentkow		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			07/28/2003	_____	07/28/2003		
/2	mdsida 08/06/2003	kgilfoy 08/06/2003	pgreensl 08/06/2003	_____	sbasford 08/06/2003	mbarman 08/18/2003	

FE Sent For: *at intro*

<END>

2003 DRAFTING REQUEST

Bill

Received: **07/15/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Jay**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - district attys
Criminal Law - procedure
Munis - miscellaneous
Counties - miscellaneous
Courts - miscellaneous**

Extra Copies: **rlr
rpn**

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Agreements not to prosecute or to amend or dismiss charges

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 07/21/2003	kgilfoy 07/28/2003		_____			
/1			jfrantze	_____	amentkow		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			07/28/2003 _____		07/28/2003		
/2	mdsida 08/06/2003	kgilfoy 08/06/2003	pgreensl 08/06/2003 _____		sbasford 08/06/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 07/15/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: Jay

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - district attys
Criminal Law - procedure
Munis - miscellaneous
Counties - miscellaneous
Courts - miscellaneous

Extra Copies: rlr
rpn

Vaughn.vance@doj-state.wi.us

Submit via email: YES

Requester's email: Sen.Hansen@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Deferred prosecution agreements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 07/21/2003	kgilfoy 07/28/2003	<i>JK</i>	<i>JK</i>			
/1		<i>12-8/6</i> <i>kmg</i>	<i>jfrantze</i> <i>PS</i>	<i>atch</i>	amentkow		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			07/28/2003 _____		07/28/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 07/15/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: Jay

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - district attys
Criminal Law - procedure

Extra Copies:

rlr
RPN

Submit via email: YES

Requester's email: Sen.Hansen@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Deferred prosecution agreements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	mdsida	1-7/28 Kmg	7/28	Belb 7/28			

FE Sent For:

<END>

Dsida, Michael

From: Wadd, Jay
Sent: Tuesday, July 15, 2003 2:32 PM
To: Dsida, Michael
Subject: drafting request

Hi, Mike--

Per my voicemail.

I'm sure you've seen in the press the concerns raised by certain prosecutors making agreements to defer prosecution in some cases where the defendant has agreed to make a donation to either the prosecutor's own fund or to a charitable contribution of the prosecutor's choosing.

As I understand it, these types of agreements are prohibited after a person has been charged but the law is unclear (or is silent on the use of these agreements) prior to charging.

Sen. Hansen would like to draft legislation that would extend this prohibition to these types of cases where charging has not taken place.

In addition, Sen. Hansen would like to draft legislation that would require all deferred prosecutions to be reviewed and approved by the court so there is a public record of the agreement and proceedings leading up to it.

I'm sure we'll need to talk about this one because i can't imagine this is that simple of an issue. My # is 266-5670.

Thanks!

Jay Wadd
Sen. Hansen's Office

967.057

madison.com

Entertainment | Classifieds | Jobs | Autos | Homes | Rentals | Archives

Archives

[Back] [Email to a Friend] [Printer Friendly Version]

Justice For Sale

Da's Deals Let People Buy Way Out Of Trouble

As Prosecutor, Vince Biskupic Made Secret Deals In Which People Paid Substantial Sums To Avoid Prosecution.

Wisconsin State Journal :: FRONT :: A1

Sunday, July 13, 2003
Dee J. Hall and Andy Hall Wisconsin State Journal

As investigators closed in on him, Appleton resident Floyd Banks tipped the scales of justice in his favor.

He pulled out his checkbook.

By signing a secret agreement to "donate" \$5,000 to police and court programs "as a sign of remorse," Banks, a machinist, bought his way out of being charged with a felony in 1996, according to public documents obtained by the Wisconsin State Journal. Eight others involved in the case were charged with felony perjury and convicted of felony and misdemeanor offenses for helping an Appleton man conceal \$75,000 in lottery winnings in a divorce case.

The young prosecutor who set up that deal with Banks: Vince Biskupic, then Outagamie County district attorney, who last year narrowly lost a race to become attorney general of Wisconsin and still is coveted by Republican strategists as a potential candidate for high office.

GET YOURS AT

**Gift Certificates
Available Online**

EAST TOWNE MALL
WEST TOWNE MALL

The advertisement features a dotted line starting from the text 'GET YOURS AT' at the top, extending down to the main headline 'Gift Certificates Available Online'. From the bottom of this line, a dotted arrow points to the right, leading to two dark rectangular buttons with white text: 'EAST TOWNE MALL' and 'WEST TOWNE MALL'.

The Banks case was among at least 13 in which Biskupic permitted people to avoid criminal charges after they paid from \$500 to \$8,000 in secret deals that raise legal and ethical concerns about Biskupic's practices, a State Journal investigation shows.

During his eight years as Outagamie County's top prosecutor, Biskupic raised at least \$37,000 from individuals in uncharged deals, the newspaper found.

Documents show the money went to politically important police agencies and nonprofit groups and to a fund over which Biskupic had sole control in the district attorney's office -- despite a state ethics law prohibiting state officials from using their positions to provide substantial benefits to organizations with which they're associated.

Biskupic used money from the DA Crime Prevention and Awards fund to give plaques to police officers and print thousands of calendars each year touting his prosecutorial record in the Fox River Valley, 100 miles northeast of Madison, where he cultivated a tough-on-crime image for locking up violent criminals.

In response to the State Journal's findings, two prominent Wisconsin legal experts are calling for a change in state law to ban prosecutors from covertly signing pacts that involve substantial payments to third parties.

"It smacks of buying justice outside of the courtroom," said former Supreme Court Justice Janine Geske, who was appointed by former Republican Gov. Tommy Thompson. Geske said although a prosecutor may have good intentions, he may gain unfair political advantage by taking credit when payments are distributed to influential organizations.

Biskupic defended his use of the fund and the uncharged deals in an interview with the State Journal last October, when the fund's existence was revealed just before the election in a lawsuit filed by the Democratic Party of Wisconsin. He came in a close second to Democrat Peg Lautenschlager. Biskupic, 39, a father of four, is now in private practice in Appleton. He currently serves as a state special prosecutor on a murder case and a sexual-abuse case.

In the October interview, Biskupic said deals with uncharged individuals offer an efficient means of dispensing justice while taking into account the crime, the potential defendant and the evidence. Over the past six weeks, however, Biskupic declined to return repeated, detailed messages seeking comment on the issues and cases outlined in this report.

The State Journal's investigation of Biskupic's deals with uncharged individuals shows that:

- * Poor people and their attorneys weren't informed that such deals existed. Included in the group paying money in exchange for avoiding charges were two dentists, two corporate executives, a contractor and a student at an expensive private college.
- * By making payments ranging from \$500 to \$8,000, and sometimes agreeing to other terms such as counseling or cooperating with investigators, the people signing Biskupic's deals avoided charges including criminal damage to property, drug dealing, making obscene telephone calls, criminal perjury, forgery and patronizing a prostitute.
- * Two people contend they were innocent and felt pressured to sign the agreements to protect their reputations. One said he was "shaken down" by Biskupic.
- * Spot checks with prosecutors in a third of Wisconsin's 72 counties indicate that more than half use uncharged agreements. Of the 17 prosecutors who reported using such deals, some said they collected no money; others said they collected roughly \$50 to \$200, not the thousands of dollars that Biskupic exacted from some individuals. The prosecutors said such agreements represented a tiny part -- probably less than 1 percent -- of the cases they handle and the offenses included domestic violence, theft and disorderly conduct.

It's legal for Wisconsin prosecutors to make deals that permit people to avoid facing criminal charges. The law leaves it up to prosecutors, elected officials who by tradition are accorded extraordinary discretion, to decide what they'd like to include in those deals -- including the size of any payments and where they should go.

Former Supreme Court Justice Geske and Walter Dickey, a UW-Madison law professor who has served on three state sentencing-reform projects since the 1980s, called on the Legislature to ban prosecutors from soliciting large sums of money from uncharged people, when the money is going to a third party rather than compensating the victim of the crime.

Geske, now a Marquette University law professor, said she had never heard of the practice of striking large financial deals with uncharged individuals although she's taught sentencing courses for judges locally and nationally for 15 years.

Dickey said that because prosecutors are afforded great latitude in dispensing justice, their deals with uncharged

people should be open to public scrutiny to ensure the power is used responsibly.

Unless the law is changed, Dickey said, innocent people will sign the agreements to avoid the public shame of being charged, guilty people will escape prosecution by paying money, poor people will be denied access to part of the justice system, and judges will be denied an opportunity to ensure that the agreements are appropriate.

Defense attorneys and public defenders around the state said they hadn't heard of prosecutors besides Biskupic taking in large donations from uncharged individuals. No one knows exactly how many people are involved, or how much they're paying, because there is no public accounting of the deals.

Waring Fincke, president of the Wisconsin Association of Criminal Defense Lawyers, said Biskupic had a statewide reputation for exacting large payments in exchange for agreeing not to file charges. Other district attorneys, Fincke said, typically would push for no more than \$200 in such cases, and the money frequently would go to compensate victims.

Fincke said it was widely believed by defense attorneys that lawyers with close connections to Biskupic were able to obtain extra-friendly settlements to avoid the filing of charges. The West Bend attorney declined to identify the attorneys, saying, "If you were looking to seek to buy your way out of a piece of litigation, then you knew who to call."

Ethics Board is investigating

Biskupic's use of his office fund is being investigated by the state Ethics Board, which became interested in it last fall after questions were raised by journalists and the Democratic Party of Wisconsin. Ethics Board executive director Roth Judd said his agency is investigating whether Biskupic violated the state law that prohibits public officials, including district attorneys, from using their positions to provide substantial benefits to organization with which they're associated.

Biskupic, according to his own statements, had sole control over the money that flowed into and out of his calendar fund, which he closed last November.

"Whether the facts will vindicate Mr. Biskupic or lead to a different conclusion, I cannot say today," Judd said. "In any event, the Ethics Board expects to make a public accounting of the pertinent facts and a statement about how or whether Wisconsin's ethics code applies to those facts."

Prosecutors' opinions vary

District attorneys' deals with uncharged individuals are a variation of "deferred prosecution agreements," a widely used technique that permits defendants who meet certain conditions to avert a conviction. In traditional deferred prosecutions, defendants plead guilty or no contest to a charge first, then charges are reduced or dismissed and punishment withheld if defendants comply with the terms of the agreement. In many cases, the defendant avoids being convicted of the charge.

But unlike regular deferred prosecutions, deals with uncharged individuals:

- * Aren't filed in court.
- * Aren't reviewed or approved by judges.
- * Aren't known to the public.

Biskupic's deals with uncharged individuals were printed on a title page implying they were official Outagamie County Circuit Court documents, although the papers were kept in the prosecutor's office and never were filed in court. They listed the state of Wisconsin as plaintiff and the individual as defendant -- when actually there were no charges filed so there was neither a plaintiff nor a defendant.

The agreements contained little or no information about the alleged offense. In contrast, standard cases include detailed descriptions of the alleged wrongdoing, including when and where it happened and who was involved.

David Wambach, Jefferson County's Republican district attorney and president of the Wisconsin District Attorneys Association, is among the district attorneys using pre-charging agreements. He believes the practice will grow as the state's financial condition worsens because it reduces the costs of administering justice. Such deals make sense, Wambach said, for first-time offenders who hope to turn their lives around and who deserve a chance to remain felony-free.

Tom McAdams, assistant district attorney in charge of misdemeanor prosecutions in Milwaukee County, said uncharged deals are used very rarely in the state's largest county. McAdams said he's never heard of them involving more than about \$200, and the payments usually go to victims rather than the district attorney's office or other groups.

Dane County District Attorney Brian Blanchard, a Democrat, said his office has offered a few uncharged deals to youthful offenders, but not in exchange for money.

"Requiring potential defendants to pay money to a third party of the prosecutor's choosing in order to avoid criminal prosecution is justice for sale, and under certain circumstances, it looks like extortion," Blanchard said.

Brown County District Attorney John Zakowski, a Republican, said his office has signed deals with a small number of people who avoided charges, but none of the agreements involved substantial amounts of money to third parties. "The problem there is... you're kind of buying off your prosecution," Zakowski said.

Sauk County District Attorney Pat Barrett, a Democrat, said she opposes uncharged deals because they jeopardize the rights of victims to have a say in the punishment. Also, if a person reneged on a deal, it could be difficult to reconstruct a case a year or two after the offense, she said.

Other prosecutors said they avoid deals with uncharged individuals because they simply lack the staff to monitor whether people are complying with the agreements.

The chairman of the Assembly judiciary committee said he plans to ask Biskupic about his dealings with uncharged individuals. But Rep. Mark Gundrum, R-New Berlin, said the Legislature should "go slow" in seeking to limit prosecutors because of the state's historic separation of powers between branches of government.

The chairman of the Senate judiciary committee, Dave Zien, R-Eau Claire, declined to comment on Biskupic's practices.

Attorney General Lautenschlager, a former U.S. attorney, said requiring large donations in exchange for more lenient treatment "is bad in terms of the public's perception of justice -- that people with money have the ability to buy their way out of jail -- even if technically they (agreements) fall within the confines of the law."

Joshua Marquis, a National District Attorneys Association board member from the state of Oregon, agreed. He called tactics such as those used by Biskupic "inherently corrosive to people's confidence in the justice system."

"It creates a two-tier system of justice -- those with money and those without."

The system in Biskupic's office was so secretive that Biskupic's top deputy didn't know what criteria were used in offering the deals, and the longtime head of the state public defender's office in Appleton, which represents poor people, only last fall learned that some well-to-do individuals had bought their way out of court while his clients faced felony charges.

Carrie Schneider, who was Biskupic's handpicked deputy for two years before being elected district attorney in November, said she's suspending the practice of offering uncharged deferred prosecution agreements until she learns more about them. Asked to comment on Biskupic's uncharged deals, Schneider, a Republican, said she hasn't examined them and doesn't intend to.

Four assistant district attorneys who worked under Biskupic -- including Mitch Metropulos, the Democratic candidate who ran unsuccessfully against Schneider in 2002 -- said they oppose such uncharged deals, which Biskupic kept under wraps, even around the office.

Metropulos, who now works as an assistant district attorney in Winnebago County, echoed the sentiments of the other three former assistant district attorneys who worked under Biskupic: "I have a real problem with the

practice. I think it's a real shady way to practice justice."

Money to Biskupic's office

Although Biskupic often used the deals to raise money for worthy causes, in several cases, he used them to boost the bottom line of his own office. In two cases, potential defendants agreed to pay \$1,100 each for interns in Biskupic's office. The agreements allowed the two to avoid charges of soliciting a prostitute stemming from a secret John Doe investigation that Biskupic had run.

In prosecuting the perjury cases against Appleton machinist Floyd Banks and the others, Biskupic's aim was to raise money for a van for his investigator, Steve Malchow, according to Mike Balskus, a former assistant district attorney under Biskupic. Only one of the nine people under investigation - Banks -- accepted the \$5,000 deal, said Balskus, who handled the prosecution.

"I was instructed to make an offer to all of these guys: If you come in and pay five grand ... there would be no charges," said Balskus, now an assistant district attorney in neighboring Winnebago County.

In that prosecution, eight people were charged with felonies for lying in a divorce case involving William and Estelle Moes of Appleton. Banks was not charged.

Seven, including William Moes, were convicted of felonies including perjury and false swearing, thereby losing the right to vote and to own a gun. The eighth was convicted of misdemeanor false swearing. The defendants received sentences ranging from probation to six months in jail.

Banks and his Appleton attorney, Michael Rudolph, declined to talk about the agreement. Joseph Troy, the Outagamie County circuit judge who asked Biskupic to investigate whether Banks and the others committed perjury, said he was unaware any agreement had been struck with Banks to avoid prosecution.

Biskupic initially directed that the money be sent to the vehicle fund of the Outagamie County Sheriff's Department. Later, Biskupic changed the agreement to benefit four groups, including an anti-gang organization run by the sheriff's office. Sheriff Brad Gehring, whose department got \$2,000 in the deal, was surprised to learn the payment wasn't court-ordered.

"A lot of hope for Vince"

Questions about Biskupic's handling of cases are beginning to trickle down to his supporters. But they remain convinced he could win election to statewide or congressional office, said Brian Murray, chairman of the Outagamie County Republican Party, and Cody Splitt, the vice-chairwoman, who's been active in the GOP for more than 70 years.

"In the state party and the county party, everyone has got a lot of hope for Vince, because they thought he was such a terrific candidate," Murray said.

Murray said he's comfortable with details he's heard of several cases in which Biskupic worked out deals with people who weren't charged after paying money. "It sounded like an expedient form of remedying the problem and making those people contribute to the very things that they may have hurt," Murray said.

"So far I'm not convinced this is an ethical smudge."

Splitt said Biskupic remains a potent political force if he ever decides to seek office again. People in Appleton, Splitt said, "think the world of him and his family."

KEY POINTS

* Individuals who could afford it were secretly permitted to buy themselves out of being charged with crimes at least 13 times by Vince Biskupic while he was Outagamie County district attorney.

* Deals with uncharged individuals raised at least \$37,000 for politically important police agencies and nonprofit groups and to a fund over which Biskupic had sole control in the district attorney's office -- although a state law

bars state officials from using their positions to benefit organizations with which they're associated.

* The deals raise legal and ethical concerns about Biskupic's practices. Two prominent legal experts say laws governing Wisconsin's county prosecutors must be reformed.

A Wisconsin State Journal investigation:

Today: While building a statewide image for being tough on crime, district attorney Vince Biskupic approved secret deals allowing at least 13 people in Outagamie County to buy their way out of being charged with crimes by paying \$500 to \$8,000.

Monday: Wisconsin's chief judges assumed they'd shut down prosecutors' efforts to raise money from defendants. They were wrong.

madison.com

Entertainment | Classifieds | Jobs | Autos | Homes | Rentals | Archives

Thank you for using our printer friendly story page.

[Return to story](#)

Deals Came To Light In Race For State Office

Domestic-abuse Shelter Appears To Be Major Recipient Of Money From Biskupic Deals.

Wisconsin State Journal :: FRONT :: A4

Monday, July 14, 2003
Dee J. Hall Wisconsin State Journal

Vince Biskupic's uncharged deals began to come under public scrutiny last fall during the heat of his campaign to become Wisconsin attorney general.

In the election, Biskupic, a Republican, finished a close second to Democrat Peg Lautenschlager.

Last October, a Waupaca County judge ordered Biskupic to turn over records related to his DA Crime Prevention and Awards fund after the Democratic Party of Wisconsin sued and the Wisconsin State Journal filed an open-records request.

The records showed Biskupic raised roughly \$14,000 over eight years from 14 charged and uncharged individuals for the fund, which he used to pay for award plaques for police officers and to print calendars listing the lengthy sentences that his office had won in prosecuting criminals.

In addition to money from defendants, Biskupic also solicited corporate sponsors, who paid \$600 a month to be listed on the calendar, raising up to \$7,200 a year for his fund. Biskupic maintained sole control over the money, which was not audited by Outagamie County.

Among the regular corporate sponsors was defense attorney Richard Bollenbeck of Appleton, one of the attorneys whose cases are being scrutinized in a year-long FBI investigation in neighboring Winnebago County.

The investigation was launched last year after a drunken-driving defendant claimed she gave cash payments to Oshkosh defense attorney Milton "Mitch" Schierland in exchange for lenient treatment from then-Winnebago County District Attorney Joseph Paulus, Biskupic's former boss and longtime friend. Bollenbeck, Schierland and Paulus didn't return calls seeking comment.

The records released last October included only cases in which Biskupic agreed to reduce or avoid filing charges in exchange for contributions to his calendar fund. The deals often called for donations not only to Biskupic's fund but also to other local anti-crime agencies.

Not included in the release of records were deals in which defendants paid money solely to the anti-crime groups. Information about some of those deals was obtained over the past several months by the State Journal.

In addition to the 13 uncharged deals, the State Journal has obtained 11 agreements in which Biskupic reduced or dismissed criminal charges in exchange for donations totaling \$45,000 to the fund he controlled or to local anti-crime groups. The largest recipient of funds from Biskupic's charged and uncharged deals appears to be Harbor House, an Appleton domestic-abuse shelter whose board includes local business leaders.

Two potential defendants who signed uncharged deals with Biskupic in exchange for

\$6,000 and \$8,000 donations to Harbor House said they were innocent of any crime but believed they had to pay the money to protect their reputations.

Those allegations don't bother Harbor House's executive director, Beth Schnorr.

She said she's never looked into the circumstances surrounding those donations and doesn't plan to.

"If someone committed a crime and is asked to give money to an organization like Harbor House, I don't have any problem with that," she said, adding, "I'm not aware of any coercion."

Return to story

madison.com is operated by Madison Newspapers Inc., publishers of the Wisconsin State Journal, The Capital Times, Agri-Apartment Showcase. All contents Copyright ©, Madison Newspapers, Inc. All rights reserved.

madison.com

Entertainment | Classifieds | Jobs | Autos | Homes | Rentals | Archives

Thank you for using our printer friendly story page.

Return to story

Judges Tried, But Didn't Slam Door On Price-tag Justice

Some Lawyers, Even Those Whose Clients Benefited From Vince Biskupic's Deals, Found Them Distasteful.

Wisconsin State Journal :: FRONT :: A1

Monday, July 14, 2003

Dee J. Hall and Andy Hall Wisconsin State Journal

In the mid-1990s, Wisconsin's chief judges came up with a proposal they thought would solve the problem of defendants buying their way out of legal trouble.

Back then, a committee drawn up by the judges who preside over each of Wisconsin's circuit courts investigated whether police, prosecutors and judges were inappropriately using their power to raise money for crime-prevention groups.

The panel heard stories about defendants who avoided traffic tickets by giving money to police benevolent associations and defendants whose charges were lowered or dismissed because they gave money to groups favored by law enforcement and the judiciary.

Some judges and prosecutors defended the practice, saying it was a good way to raise money for worthy organizations.

But the committee chairman, Dane County Circuit Judge Daniel Moeser, said he and his colleagues "didn't feel it was proper to use criminal charges to pay for someone's pet projects" or that "someone with money gets treated differently than someone without money."

The chief judges pushed for a law that made it illegal for prosecutors to dismiss or amend charges in exchange for a defendant's contribution to a crime-prevention organization.

The law took effect in April 2000.

But the new law didn't stop District Attorney Vince Biskupic from raising thousands of dollars in "donations" from people facing possible criminal charges in Outagamie County.

"It did not restrict prosecutors on ... cases that are not filed," Biskupic told the Wisconsin State Journal in an October interview.

"Clearly the intention of the law was to still give prosecutors and the parties involved in those cases, pre-charging, the opportunity to resolve them."

And that's exactly what Biskupic did.

While the chief judges assumed they'd shut down prosecutors' efforts to raise money from defendants, Biskupic continued a longstanding practice: Getting money from people who are never charged, in deals not reviewed by judges or filed with the court.

Although most prosecutors contacted by the State Journal say they've made deals with uncharged individuals, no one reported raising as much money as Biskupic.

Biskupic, the Republican nominee for Wisconsin attorney general in 2002, used such secret uncharged deals to raise tens of thousands of dollars, including in cases where evidence of

crime was questionable, a State Journal investigation shows.

From 1996 to 2002, Biskupic signed at least 13 deals with uncharged defendants involving money, raising at least \$37,000 for local anti-crime groups and the DA Crime Prevention and Awards fund, over which Biskupic had sole control. Before the law was changed, Biskupic signed at least 10 additional agreements to reduce or dismiss charges in exchange for money, raising at least \$40,000 for local groups and for his own fund, which Biskupic used to print calendars touting his prosecutorial record.

And the State Journal has identified one deal that may have violated the state law passed in 2000. In May 2000, Biskupic filed then withdrew three felony drug charges and replaced them with misdemeanors two months later after a 20-year-old Lawrence University student agreed to pay \$4,000 to a local police group. That agreement was signed in February 2001.

Last fall, Biskupic defended his deals with uncharged individuals as efficient and effective, but for the past six weeks he declined repeated, detailed requests to respond to the issues examined in this report.

And in connection with the fund Biskupic operated, the Wisconsin Ethics Board is investigating whether Biskupic violated the state law that prohibits public officials, including district attorneys, from using their positions to obtain financial gain for any organization with which they're associated.

\ 'Deals called repulsive'

Former Supreme Court Justice Janine Geske, now a Marquette University law professor; and Walter Dickey, a University of Wisconsin law professor who has been involved in three state sentencing-study efforts since the early 1980s, said they are troubled by the secrecy, potential for extortion and disparate treatment of poor people in deals involving uncharged individuals. They called for the Legislature to ban the practice, particularly when large sums of money are going to third parties rather than compensating victims of crimes.

However, Waring Fincke, president of the Wisconsin Association of Criminal Defense Lawyers, said prosecutors should be allowed to continue making deals with uncharged individuals. Although he believes Biskupic misused his discretionary powers, Fincke said defendants in Wisconsin should be given the chance to maintain a clean slate.

And he said defense lawyers are obligated to pursue offers that could avert the filing of criminal charges.

"If I've got a client I can get a sweet deal for, for a few extra dollars, I owe it to my client to pursue that deal," Fincke said.

But some lawyers, even those whose clients benefited from Biskupic's deals, found them distasteful.

Appleton defense attorney Nila Robinson said she signed one agreement with Biskupic in which a Lawrence University student was charged with a misdemeanor drug offense instead of a felony after his family donated \$5,000 to a local anti-crime group. She said \$5,000 was the "going freight" in Outagamie County under Biskupic during the 1990s to get more lenient treatment. She declined to name her client, and that deal was not among the agreements obtained by the State Journal.

"The kid's family paid a large amount of money to give the kid a break who, five years earlier, under a different district attorney, would've gotten a break anyway," Robinson said. "They (district attorneys) used to just do it because it was right."

Although she recommended such deals to her clients, Robinson said she found them "repulsive," adding, "I think they should be investigated."

Moeser said he and the other judges believe there isn't much they can do about cases that never come before the court. But Moeser wasn't happy to learn that prosecutors were making secret deals with defendants outside of the courtroom.

"When a charge gets filed, there's a written complaint. If a deal is later made, at least the public knows the facts leading up to that," Moeser said. "(In uncharged cases), there's no public record on what's happening. There's no way for the public to find out about it.

"I'm not saying there is abuse. I'm saying it could lead to tremendous abuse."

Chris Ahmuty, executive director of the American Civil Liberties Union of Wisconsin, called Biskupic's use of large sums of money from uncharged individuals a "troubling practice that has the potential for abuse that would raise it to a constitutional issue." For example, he said, people could be coerced into signing deals to protect their reputations, and that could deprive them of their constitutional right to be prosecuted only when the government follows "due process" -- proper procedures.

He agreed that state law should be changed. "DA's need discretion but they also need to work within some parameters and it's entirely appropriate for the Legislature to set those parameters," Ahmuty said.

\ One more deal

After the law took effect making it illegal to reduce or dismiss charges in exchange for donations, Biskupic signed one more deal.

In May 2000, Biskupic filed then withdrew three felony drug trafficking charges stemming from the sale of \$60 worth of marijuana -- less than half an ounce -- after Lawrence University student Sean Kilgore agreed to cooperate with investigators and pay \$4,000 to Beat the Heat, a police group that works with young people to fix up and race cars on local race tracks. Biskupic filed three misdemeanor charges of drug possession against Kilgore in July 2000.

The deal, finalized in February 2001 between Biskupic and Appleton defense attorney Richard Bollenbeck, was kept secret from the judge in the misdemeanor case, Outagamie County Circuit Judge Michael Gage. Kilgore's attorney, Bollenbeck, was a regular contributor to Biskupic's calendar fund.

Sean's father, Kevin Kilgore, an Eagan, Minn., physician, believes Biskupic and the police were "targeting kids with big money" at Lawrence, where tuition is \$30,000 a year. He said if Biskupic got the money from him improperly, he wants it back.

Sean Kilgore said that although the agreement required him to cooperate with the Winnebago Area Metropolitan Enforcement Group, the local drug task force, officers never called him. Sgt. Brad Dunlap, head of the unit, declined to say whether Kilgore worked for the task force.

Said Kilgore: "They were just looking for someone to put charges on, and they found me."

[Return to story](#)

madison.com is operated by Madison Newspapers Inc., publishers of the Wisconsin State Journal, The Capital Times, Agri-
Apartment Showcase. All contents Copyright ©, Madison Newspapers, Inc. All rights reserved.

P/c to Jay

Cover civil offenses too

Broaden agys covered (one of recipients was
Harbor House ≠ crime prev. org) ?

7/18 left msg ↗

P/c to Jay -

Don't cover pmts to other types of ~~orgs~~
Non profits.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2982-2

MGD: King

DNR

PRELIMINARY DRAFT NOT READY FOR INTRODUCTION

Tues
7/29

Sen. Cox
AN ACT... relating to: failing to initiate criminal or civil proceedings based on
a person's
contribution to a crime prevention organization or agency.

Analysis by the Legislative Reference Bureau

Current law prohibits a prosecutor from dismissing or amending a criminal charge in exchange for a person's payment of a contribution to a crime prevention organization or a law enforcement agency's crime prevention fund. Current law similarly prohibits a prosecutor or other government attorney from dismissing or amending a citation or complaint in a civil case in exchange for such a payment if the citation or complaint alleges a violation punishable by a forfeiture. This bill prohibits a prosecutor or other government attorney from electing not to commence a criminal prosecution or a civil action based on a violation punishable by a forfeiture in exchange for a person's payment of a contribution to a crime prevention organization or a law enforcement agency's crime prevention fund.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 778.027 of the statutes is amended to read:
4 778.027 ~~Dismissals for contributions~~ Contributions to certain
5 organizations or agencies and government attorney conduct. A prosecutor

1 or an attorney representing the state or a political subdivision of the state may not,
2 in exchange for a person's payment of a contribution to an organization or agency
3 specified in s. 973.06 (1) (f) 1., dismiss or amend a citation or complaint alleging a
4 violation that provides for a forfeiture or elect not to initiate an action or special
5 proceeding based on such a violation.

History: 1999 a. 58, 186.

6 **SECTION 2.** 967.057 of the statutes is amended to read:

7 **967.057 ~~Dismissals for contributions~~ Contributions to certain**
8 **organizations and agencies and prosecutor conduct.** A prosecutor may not,
9 in exchange for a person's payment of a contribution to an organization or agency
10 specified in s. 973.06 (1) (f) 1., dismiss or amend a charge alleging a criminal offense
11 or elect not to commence a criminal prosecution.

History: 1999 a. 58, 186.

12

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2982/1dn

MGD:./:...

kmj

Jay:

As I mentioned on the phone, conceivably, this bill could be construed as unconstitutionally limiting a district attorney's discretion not to prosecute particular cases. Unfortunately, Wisconsin court opinions that address a prosecutor's authority not to prosecute do so only in general terms.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2982/1dn
MGD:kmg:jf

July 28, 2003

Jay:

As I mentioned on the phone, conceivably, this bill could be construed as unconstitutionally limiting a district attorney's discretion not to prosecute particular cases. Unfortunately, Wisconsin court opinions that address a prosecutor's authority not to prosecute do so only in general terms.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, August 05, 2003 12:02 PM
To: Vance, Vaughn L.
Subject: RE: LRB2982/1

Should 1 and 2 apply to existing statutes regarding cases that have been commenced as well? That is, should the current prohibition on amending or dismissing charges based on a contribution to a s. 973.06 (1) (f) organization or agency be extended to cases involving payments (other than restitution) made to any organization or agency?

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

From: Vance, Vaughn L.
Sent: Friday, August 01, 2003 3:52 PM
To: Dsida, Michael
Subject: LRB2982/1

Mike:

Peg has asked me to request the following changes to Sen. Hansen's draft above (LRB-2982/1). It is her intention to create a draft as quickly as possible to use in a public announcement in the near future. She has asked that I rush this request as much as possible.

I should also note that we have expressed these same concerns to Sen. Hansen so a similar draft may well be in the works already.

Peg would request that:

- 1) Explicit language be included in the draft that would exclude provisions in deferred prosecution agreements that relate to restitution dollars; and
- 2) Prohibit contributions to any organization or agency -- aside from restitution dollars -- regardless of if they are enumerated in s. 973.06 (1) (f) 1; and
- 3) Inquire with you about application of relevant penalties envisioned for violations of the prohibition. Is there a default criminal penalty or civil forfeiture that applies or would that have to be specified?

Thanks for your help with this.

vlv

VAUGHN L. VANCE
Legislative Liaison
Office of the Attorney General
Wisconsin Department of Justice
608/264-9463 (Direct)

MD -
Add FE S+L - ~~1~~ "1" should have had it ~~2~~ too ~~MD~~

Dsida, Michael

From: Vance, Vaughn L.
Sent: Tuesday, August 05, 2003 2:31 PM
To: Dsida, Michael
Subject: RE: LRB2982/1

Mike;

I talked to Peg & Dan. Here are my marching orders:

- 1) It would be appropriate that a violation trigger an ethics violation, to be determined by the Ethics Board.
- 2) We don't want enforcement authority
- 3) We want to apply broad proscription for all non-restitution payments as applied to deferred prosecution, but also the amending and dismissal circumstances you raise.

Thanks.

Vaughn

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

From: Dsida, Michael
Sent: Tuesday, August 05, 2003 11:50 AM
To: Vance, Vaughn L.
Subject: RE: LRB2982/1

Re no. 3:

The penalty is in s. 939.61 (2) -- a \$200 forfeiture.

In view of your interest in the penalty, do you want to give DOJ the power to enforce this prohibition?

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

From: Vance, Vaughn L.
Sent: Friday, August 01, 2003 3:52 PM
To: Dsida, Michael
Subject: LRB2982/1

Mike:

Peg has asked me to request the following changes to Sen. Hansen's draft above (LRB-2982/1). It is her intention to create a draft as quickly as possible to use in a public announcement in the near future. She has asked that I rush this request as much as possible.

I should also note that we have expressed these same concerns to Sen. Hansen so a similar draft may well be in the works already.

Peg would request that:

- 1) Explicit language be included in the draft that would exclude provisions in deferred prosecution agreements that relate to restitution dollars; and
- 2) Prohibit contributions to any organization or agency -- aside from restitution dollars -- regardless of if they are enumerated in s. 973.06 (1) (f) 1; and
- 3) Inquire with you about application of relevant penalties envisioned for violations of the prohibition. Is there a default criminal penalty or civil forfeiture that applies or would that have to be specified?

Thanks for your help with this.

vlv



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2982/1
MGD:kmg:jf

2003 BILL

2:00 pm
Wed

Sen. Cat

1 AN ACT to amend 778.027 and 967.057 of the statutes; relating to: not initiating
2 prosecution decisions based on certain payments to organizations or agencies
3 criminal or civil proceedings based on a person's contribution to a crime
prevention organization or agency.
representing the state or a local government

any
Analysis by the Legislative Reference Bureau

any
Current law prohibits a prosecutor from dismissing or amending a criminal charge in exchange for a person's payment of a contribution to a crime prevention organization or a law enforcement agency's crime prevention fund. Current law similarly prohibits a prosecutor or other government attorney from dismissing or amending a citation or complaint in a civil case in exchange for such a payment if the citation or complaint alleges a violation punishable by a forfeiture. This bill prohibits a prosecutor or other government attorney from electing not to commence a criminal prosecution or a civil action based on a violation punishable by a forfeiture in exchange for a person's payment of a contribution to a crime prevention organization or a law enforcement agency's crime prevention fund.

INS
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: money, other than restitution, to any

4 SECTION 1. 778.027 of the statutes is amended to read:

5 778.027 Dismissals for contributions Contributions to certain
6 organizations or agencies and government attorney conduct. A prosecutor

Prosecution decisions based on

BILL

money, other than restitution, to

1 or an attorney representing the state or a political subdivision of the state may not,
 2 in exchange for a person's payment of a contribution to an ^{any} organization or agency
 3 ~~specified in s. 973.06 (1) (f) 1.~~ ^{plain comma} dismiss or amend a citation or complaint alleging a
 4 violation that provides for a forfeiture or elect not to initiate an action or special
 5 proceeding based on such a violation.

SECTION 2. 967.057 of the statutes is amended to read:

7 **967.057 Dismissals for ^{PLAIN} contributions ~~Contributions~~ to certain**
 8 **organizations and agencies ~~and prosecutor conduct~~** A prosecutor may not,

9 in exchange for a person's payment of a contribution to an ^{any} organization or agency
 10 ~~specified in s. 973.06 (1) (f) 1.~~ ^{plain comma} dismiss or amend a charge alleging a criminal offense
 11 or elect not to commence a criminal prosecution.

(END)

© Prosecution decisions based on 

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2982/2ins
MGD:.....

1

analysis INSERT





This bill also extends the scope of the prohibitions in current law regarding dismissing or amending criminal or civil charges so that the prohibitions apply in cases involving payments — other than restitution — to any type of organization or agency, not just those involved in crime prevention.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Basford, Sarah

From: Wagnitz, John
Sent: Monday, August 18, 2003 9:57 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2982/2 Topic: Agreements not to prosecute or to amend or dismiss charges

It has been requested by <Wagnitz, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2982/2 Topic: Agreements not to prosecute or to amend or dismiss charges