



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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January 6, 2011

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

Dear Mr. Sellen:

The Department of Justice has completed an investigation into potential criminal misconduct my former Dane County Assistant District Attorney Michael Verveer. Although the investigation did not identify any criminal offenses, there are concerns that some of his actions may violate attorneys rules of professional conduct. Accordingly, we submit the enclosed investigative reports for your review.

Thank you for your consideration.

Sincerely,

Kevin C. Potter
Assistant Attorney General
Administrator, Legal Services Division

KCP:lkw

Enclosures

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: January 18, 2011

To: Roy R. Korte
Director, Criminal Litigation Unit

From: David J. Wambach
Assistant Attorney General

Subject: *Closure of LSIS No. 081107025*
Investigation of Michael Verveer

I. OVERVIEW

You and your designee were appointed special prosecutor by Dane County Order dated October 30, 2008, in the matter of investigation of alleged improper conduct by an employee of the Dane County District Attorney's office, Assistant District Attorney Michael Verveer. Dane County District Attorney Brian Blanchard requested the assistance of the office of the Attorney General in a letter dated October 29, 2008, in which DA Blanchard requested that Dane County Chief Judge William Foust appoint a special prosecutor.

The Wisconsin Division of Criminal Investigation (DCI) assigned Special Agents Amy Lehmann and Dorinda Freymiller to investigate Michael Verveer as the subject of the investigation referenced in the order of appointment of special prosecutor. Further follow up investigation was conducted by Special Agents James Engels and Rafael De la Rosa. You designated me, Assistant Attorney General David Wambach, to carry out the special prosecution responsibilities on behalf of the Attorney General.

In performing this assignment, I conferred with DCI to insure a coordinated approach to the investigation. I have now reviewed all of the DCI investigative reports in this matter. The general focus of the initial investigation was whether Verveer unlawfully used his public position as an assistant district attorney. That focus widened based on information developed during the investigation.

Having completed my review, I have concluded that while Verveer's conduct was very troubling, there is no evidence that would establish a violation of any criminal laws beyond a reasonable doubt. While the conduct of attorney Verveer may have possibly violated his work rules or the rules governing the ethical conduct of attorneys under SCR 20, such a determination is not within the purview of this investigation. Accordingly, it is my recommendation that this matter be closed. A more detailed analysis and discussion follow.

II. CRIMINAL STATUTES POTENTIALLY IMPLICATED BY VERVEER'S STATUS

Wis. Stat. § 946.12 Misconduct in Public Office

Any public officer or public employee who does any of the following:

...

(2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or

(3) Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

...

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

Wis. Stat. § 19.45 Standards of Conduct; State Public Officials

...

(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

...

(5) No state public official may use or attempt to use the public position held by the public official to influence or gain unlawful benefits, advantages or privileges personally or for others.

III. INVESTIGATIVE EFFORTS

The investigation began when Dane County District Attorney Brian Blanchard requested to meet with Special Agents Dorinda Freymiller and Amy Lehmann of DCI on October 24, 2008. As a result of the initial information provided by District Attorney Blanchard, follow-up interviews occurred with the initial complainants. Subsequently, using the known phone numbers of Verveer as well as the Dane County Jail Inmate Calling Solutions Database, other leads were developed regarding calls between inmates and Verveer. All of those persons were attempted to be located and interviewed. Other investigative avenues included pursuing any complainant who was identified by persons who came forward after seeing news accounts of the Verveer investigation. Any additional persons that were identified by those who were interviewed also were attempted to be located and interviewed as further potential leads. Any referrals that were received from law enforcement agencies that had become aware of the existence of an investigation and who shared intelligence or reports provided a further basis for follow-up efforts with persons named in those reports.

Assistant Attorneys General Wambach and Barbara Oswald conferred and analyzed whether probable cause existed to support the issuance of a subpoena duces tecum pursuant to Wis. Stat. § 968.135 for the private phone records of Verveer. Assistant Attorneys General Wambach and Oswald concluded that probable cause did not exist to support the issuance of a subpoena duces tecum and that avenue was foreclosed as not being supported by the requisite level of proof.

Efforts to mine information from the Protect Case Management System and CCAP were pursued in order to develop further leads. Given Verveer's responsibility as an intake prosecutor and the volume of cases that flow through intake, any effort to identify potential persons that might be leads to violations of the type described above proved unworkable given the number of cases. For instance, a search using those persons who had multiple initial appearances in which Verveer also appeared yielded approximately 4,400 cases.

A canvas was also done, by email, of all of the Dane County assistant district attorneys to attempt to identify whether Verveer had tried to influence the outcome of any of their cases as to how they might exercise their discretion in favor of any particular defendant whose case they were assigned to. No ADA reported Verveer as contacting them in an effort to persuade them to exercise their discretion in any particular way in any of their cases.

Given the possibility of improprieties as it related to Verveer's aldermanic status affecting his interaction with liquor license holders by virtue of Joseph Redepenning's claims, a canvas of a sampling of liquor license activity in the City of Madison was conducted. Contact with those in the sample group did not reveal any claims of inappropriate activity by Verveer in the grant or denial of liquor licensure.

In sum, every possible and conceivable avenue of investigation that provided a workable approach was pursued and exhausted.

IV. FACTUAL BACKGROUND

The original allegations involved contacts between Verveer in his capacity as an assistant district attorney and various unrepresented defendants in cases in which Verveer appeared as a representative of the Dane County District Attorney's office. The initial focus of the investigation was to determine whether Verveer used his position in a way that would violate any criminal statutes. As noted above, that focus widened based on information that was learned during the course of the investigation. The following is a summary of the incidents investigated.

District Attorney Brian Blanchard described for me the parameters of Verveer's duties while employed at the Dane County District Attorney's office. Verveer's primary duty was to appear for the state at initial appearances. Verveer did not have individual cases assigned to him, nor was he responsible for making charging decisions or drafting complaints. Those duties were handled by other prosecutors. After a defendant's initial appearance, a prosecutor would be assigned to handle the case, although no such assignments were made to Verveer. Decisions to dismiss or amend charges were made by the assistant district attorney (ADA) assigned to the case. Since Verveer was not assigned a caseload, it was not his responsibility to make those decisions. However, it would not be uncommon for him to present recommendations regarding amendments, dismissals, or dispositions reflecting plea agreements reached between defendants and other ADAs prior to the defendants' initial appearances. So although Verveer may have carried out such actions, Verveer would not have been the attorney to have made the decision. Verveer, when covering initial appearances, did have the authority and discretion to make appropriate bond recommendations, deal with victim/witness issues, and address scheduling issues, including adjournments. On an infrequent and as needed basis, Verveer was assigned to cover calendar calls where cases were negotiated or resolved.

A. Cody Jensen

On October 24, 2008, Special Agents Freymiller and Lehmann interviewed Cody J. Jensen. Jensen stated that in June 2008 he was arrested for OWI and pled guilty to the charge at his initial appearance. Jensen said that he was the last appearance of the day and when he left the courtroom, Verveer approached him in the hallway and asked him why he pled guilty.

Verveer then explained to Jensen that Jensen could pay \$50 (to the clerk of court), reopen his case, and Verveer could help Jensen get his charges reduced. Verveer gave Jensen a business card on which Verveer also wrote his cell phone number. (Note: Verveer giving out his cell phone number was consistent in almost every case and in at least one case, the actual card was recovered by DCI. The card did have a cell phone number for Verveer on it as the person described.) Jensen further stated that Verveer called him a week later and left a voicemail message. In the message, Verveer identified himself, asked Jensen what he planned to do with the OWI case, and left his (Verveer's) cell phone number so Jensen could call him back. Jensen did not call Verveer back and had no further contact with Verveer until he was charged with his second OWI.

After Jensen was arrested for second offense OWI, he called Verveer and told him of the charge. He also advised him that if he was convicted of that charge, he would get kicked out of the military. Verveer told Jensen they should meet to discuss Jensen's case and see how Verveer could help him. The two of them agreed to meet on a Sunday, but the time was not determined. Instead, Jensen and Verveer were to have contact again in order to set the time. Jensen said that he did not follow-up and call Verveer nor did he meet with Verveer as Verveer had requested.

A couple days after the court date for Jensen's second OWI, Verveer called Jensen. Verveer asked Jensen how the court date went and asked Jensen why he did not call as they had discussed. Jensen told Verveer that he did try to call Verveer at the courthouse number but was unable to get in touch. Jensen acknowledged this was a lie but at the time when questioned by Verveer, Jensen felt that was all that he could think of to say to Verveer. Verveer told Jensen not to worry about his case because Verveer would figure something out for him.

In the next week to ten days, Jensen estimated Verveer called him at least ten times. Jensen said that each time Verveer called, he left a voicemail message asking Jensen how things were going and telling Jensen he was calling to talk about the next court date. During this same time period, Jensen did answer one of Verveer's calls and he and Verveer spoke about setting up a meeting to discuss Jensen's case. Although the meeting was set up for a Sunday after the Packers football game, Jensen did not go to the meeting.

Jensen recalled that the night before his court date, Verveer called him at 10:30 p.m. During that conversation, Verveer told Jensen that he CCAP'd Jensen and saw there was a warrant for his arrest in Juneau County. Verveer told Jensen that if the warrant had been issued out of Dane County, Verveer could have had the warrant lifted, but because it was not in Dane County, there was not much he could do for Jensen. Verveer advised Jensen to call in sick for the court date the following day so that Jensen would not get arrested. Verveer also told Jensen to call Juneau County and deal with the warrant. Jensen estimated that he and Verveer talked for about 20 minutes.

Jensen said the last cell phone call he received from Verveer was Wednesday, October 22 at 8:23 p.m. Jensen played the voicemail for the Special Agents. Verveer's message stated, "What's up Cody? It's Mike Verveer again. I want to make sure everything's okay with you. I don't mean to be harassing you; you don't have to talk to me if you don't want to. I want to make sure things are okay, so please call me back and let me know what's happening with the stuff." Verveer left two contact numbers, one being 267-4185, and the other being . Jensen believed that the 4185 number was Verveer's work number and the number was Verveer's cell phone number. The reports do not reflect any further contact.

B. Joseph Redepenning

On October 26, 2008, Special Agents Lehmann and Strauss interviewed Joseph Redepenning. Redepenning recalled that in 2006 when he was 17 years old, he received a citation for possession of THC and the ADA assigned to the matter was Verveer. A review of CCAP records by the Special Agents showed that in April 2005, Redepenning did have an ordinance violation for possession of THC. At that time, Redepenning was given a piece of paper and told to meet with the ADA who turned out to be Verveer. Redepenning recalled that he met with Verveer either the same day or a short time later. When Redepenning met Verveer, Verveer asked Redepenning if he knew who he-Verveer-was. Verveer told Redepenning that he was the person who organized the Mifflin Street block party, that he was going to be at the block party, and that Redepenning should come down. Verveer said that he wanted to resolve the issue of the marijuana possession for Redepenning in a positive manner, and that it was possible Redepenning could lose his license. Verveer assured Redepenning that he would not lose his license. Redepenning believed that the matter was resolved by him having to pay a fine without any further consequences or action. A review of a copy of the citation found at the Dane County Clerk of Courts office shows that Redepenning was charged in Dane County Case No. 05-FO-1125 for possession of THC when he was 17 years old. Neither the citation nor the corresponding CCAP records indicate who from the District Attorney's office was involved as prosecutor. The records confirm that Redepenning was found guilty upon a plea of no contest and ordered to pay a forfeiture.

The next contact Redepenning had with Verveer was after Redepenning was arrested in 2006 for first offense operating while intoxicated and fleeing a police officer. At Redepenning's initial court appearance, Verveer was the ADA who appeared on behalf of the state. Except for the contact in court, Redepenning had no other contact with Verveer that day. Redepenning said he missed his next scheduled court date for the OWI and was subsequently contacted by Verveer. Redepenning believed that Verveer called him on the cell phone although Redepenning had not given Verveer his number.

Verveer told Redepenning he had missed his court date and that a warrant had been issued for his arrest. Verveer told Redepenning that he would have the warrant lifted as long as

Redepenning came downtown and met with Verveer to sign a document. Redepenning also recalled, Verveer had asked Redepenning if he wanted to meet at Verveer's house or at the City-County Building, as Verveer had said he lived close to the City-County Building. Redepenning said he agreed to meet with Verveer and that they met at the City-County Building on MLK Drive on a Saturday before a Badger football game. Redepenning said he waited outside for about an hour and a half, during which time Verveer called twice to say that he was finishing some other work and would be there shortly. When Verveer arrived, they went upstairs to a room with old filing cabinets and a computer. In the room, Verveer asked Redepenning if he had ever been able to smoke in a city building before. Redepenning said he had not. Verveer told Redepenning he could smoke and encouraged him to do so. Verveer then asked Redepenning how he had gotten to the building and Redepenning said he walked. Verveer challenged Redepenning and told him that he did not walk. Verveer went on to say it was all right if he drove, that he could drive all he wanted, but he should just not get pulled over. Redepenning acknowledged that Verveer was right and that he had in fact driven to the meeting. Redepenning said during the course of their meeting he signed a piece of paper which he believed was confirmation that he was aware of a new court date. Verveer told Redepenning that he had to leave to get to the Badger game and the two of them parted company.

Review of the files of the Dane County District Attorney reveal that the above-described operating while under the influence first offense case was number 06TR016235 and was a companion to the felony fleeing in 06-CF-2008. In that case, a warrant had been issued on August 30, 2006, at an appearance in which the initials M.E.V. (which Special Agent Lehmann knows to be the initials of Verveer) as the person who appeared for the Dane County District Attorney's office. The records were cross-referenced with CCAP and show that on September 6, 2006, Redepenning appeared in court and the warrant was considered executed or served based upon the appearance of Redepenning in court at that hearing. Verveer's initials appear in the file as the prosecutor for the Dane County District Attorney's office and the court ordered a signature bond for Redepenning. There is no record in CCAP or the Dane County District Attorney's office files that reflect the warrant was withdrawn prior to Redepenning appearing at the adjourned initial appearance on September 6, 2006.

Redepenning said he was subsequently arrested for second offense OWI. Around that time he called Verveer, told him that he had been arrested for another OWI, and asked what Verveer could do for him. Verveer told Redepenning that if Verveer was assigned the case, he would have it dismissed. Redepenning got convicted and was ordered to begin serving his sentence on October 7, 2007. The police reports do not reflect that there was any contact between Redepenning and Verveer in between September 6, 2006, and Redepenning's initial appearance at his OWI second charge in Dane County Case No. 07-CT-1260 on April 26, 2007. Dane County District Attorney office files reflect Verveer's initials as the prosecutor at the initial appearance in 07-CT-1260, both on April 26, 2007, and again on May 7, 2007. District Attorney office protect case management data shows that Andra L. Nollendorfs was the assigned attorney

as of March 29, 2007, and remained the assigned attorney according to the pretrial settlement offer and discovery demand found in the District Attorney's files.

About a week before he turned himself in for jail, Redepenning called Verveer. During that conversation Redepenning indicated he was afraid he might not get out of jail upon completion of his sentence because, while out on bond for his second OWI, he had been arrested for a third OWI. Redepenning told Verveer that he had an initial appearance coming up for his third OWI and asked Verveer if he could be the ADA handling his initial appearance. Verveer told Redepenning he was busy but would get back to him. Verveer did call Redepenning back and asked Redepenning if he wanted to go downtown to have a few drinks and discuss the case. Redepenning said he agreed to meet Verveer and they did meet the night before Redepenning was to turn himself into the jail.

Redepenning said that when he met Verveer he had a friend, Andria Dorow, come along with him to the Lava Lounge in Madison. When they got there, Verveer came out and asked Redepenning if he had a fake ID. When Redepenning showed Verveer his fake ID, Verveer said it did not look very good and suggested they go to another bar where Verveer could get him in. As they were leaving the Lava Lounge, there was a fight between two people. Verveer stated the people in the fight were, "his people" and that he had helped them out too. At the next bar, the three went inside without being carded. Redepenning surmised that Verveer knew the bouncer because when they arrived, Verveer said, "these two are with me." They stayed at the bar for a couple of hours. At one point, Verveer said it was sad Redepenning had to sit in jail and that he would see if he could get Redepenning out of jail on the ankle bracelet. Redepenning asked Verveer to try to make sure that he was the assigned prosecutor at the initial appearance for his third OWI. Verveer told Redepenning and Dorow that he was going to meet some friends. They said goodnight and Redepenning reiterated that he wanted Verveer to be at the initial appearance for the third OWI. As to this and the previous question, no verbal response by Verveer is noted in the reports.

As an aside, a review of Redepenning's files with the Dane County District Attorney showed that there were no conditions of bond prohibiting the possession or consumption of alcohol. While Verveer may be subject to prosecution for procuring alcohol for an underage person, that decision lies with the Madison city attorney's office.

Redepenning recalled that after he was released from jail for the second OWI, Verveer and he talked, at which time Verveer asked him why Redepenning had told Verveer that he and Dorow were dating when in fact they were not. Redepenning acknowledged he had lied to Verveer about his relationship with Dorow. (The Special Agents knew from an interview with Dorow that Verveer and Dorow had talked while the three had been out to the bars, and that during their conversation, Verveer had learned from Dorow about the nature of the relationship between Dorow and Redepenning.)

At his initial appearance for his third OWI, Redepenning was represented by a public defender. When she asked him what he wanted to happen in his case, Redepenning told her he wanted a signature bond. She advised him she did not believe that was going to happen. At the initial appearance, Verveer appeared on behalf of the state. He recommended, and the judge ordered, a signature bond, which allowed Redepenning to be released after serving his sentence for his second OWI. Redepenning indicated that when Verveer made the recommendation for the signature bond, he smiled and winked at Redepenning. Based on information provided by Dane County District Attorney Brian Blanchard as well as a review of the District Attorney files and CCAP records, it appears that Verveer's appearance at this initial appearance would have been routine and there is no evidence or reasonable inferences to suggest that Verveer would have taken any action or done anything out of the ordinary in order to be the one to have appeared at this particular initial appearance.

Redepenning later spoke to Verveer and mentioned that he believed Verveer had met his cousin. Verveer asked who his cousin was and when told it was Cody Jensen said, "Oh, that's your cousin?" Verveer said that Redepenning and Jensen were alike because of the drunk driving charges. Verveer asked Redepenning if he was still driving and Redepenning said that he was not. Verveer responded that he could still drive and if he got into any trouble, he knew Verveer. Verveer said that he could help Jensen out and suggested that the three of them should meet. Subsequently, Redepenning made contact with Jensen and the three tried to meet after work. Verveer suggested meeting at about 10:30 p.m. but was told that time would not work. Verveer said he thought Redepenning would like Verveer to get him drunk like the last time they were out.

The night before his sentencing for his third OWI, Verveer called Redepenning. Verveer asked what ADA Humphrey had offered for a plea and when told, Verveer said that he would see if he could work it so that Redepenning would not have to sit in jail at all. That was the extent of the conversation at that time. Redepenning said he began serving his sentence and after being in jail for six days was contacted by the jail staff who told him he would be released on the diversion program. Redepenning said he was surprised because he never filled out any of the diversion paperwork he thought was necessary in order to be released on a bracelet. After getting out of jail for the OWI third, Verveer and Redepenning never had any more contact. Special Agent Lehmann knows from her review of the report of Investigator Linda Kohlmeyer that there was no evidence that Verveer had any involvement in getting Redepenning into the diversion program.

C. Matthew Tesauo

On November 4, 2008, Special Agents Lehmann and Freymiller interviewed Matthew R. Tesauo. Tesauo said he knew Verveer and that they first met before Christmas in

December 2007 after Tesauo was charged with misappropriating an ID. A review of Tesauo's criminal history record confirmed he was in fact charged with that offense on December 20, 2007. Tesauo indicated he missed the court appearance for that charge and afterward got a call from Verveer, although he did not know how Verveer got his number. During the call, Verveer introduced himself as an ADA, stated he knew that Tesauo had missed a court date, and indicated there was a warrant out for his arrest. Verveer invited Tesauo to meet with him at the office the next day so they could clear up the warrant situation before Christmas. They agreed to meet on a Saturday. Verveer let Tesauo pick the time and said to meet at the City-County Building in Madison. Verveer also indicated they had a lot of paperwork to do.

At the meeting, Verveer came from inside the building and let Tesauo in. Once inside, they went into a room that had old office furniture and appeared to Tesauo to be a smoking room. Verveer told Tesauo he could smoke and Tesauo did. Verveer provided the papers necessary to get the judge to lift the arrest warrant and to obtain a new court date and Tesauo signed them. The meeting lasted about a half hour. During that time, they talked about people they knew in common, and in particular, one family from Middleton. Verveer gave him a business card with a cell phone number and possibly a direct line written on it. Verveer told him to call if he had any questions or concerns or if he needed help in the future. The Special Agents, with the permission of Tesauo, went to the property area of the jail and found within Tesauo's property a business card with the name Michael E. Verveer, Assistant District Attorney. The card contained handwriting including, among other things, "267-4185 desk" and "cell."

Tesauo next saw Verveer at a January 3, 2008, initial appearance which Verveer was covering for the DA's office. Tesauo ended up being placed into the Day Report And Treatment (DART) program, which he believed Verveer was assigned to. Other than Tesauo and Verveer being present at the same court appearances for the DART program, Tesauo did not have any other contact with Verveer until mid-July 2008. They ran into one another on State Street in a chance encounter. They spoke briefly and Verveer asked Tesauo how things were going. That was the extent of the conversation and Tesauo's last contact with Verveer.

D. Alexander Schmidt

Special Agents Strauss and Lehmann interviewed Alexander Schmidt. Schmidt said he knew Verveer but did not recognize him as an ADA, but instead knew him as "the alderman." Schmidt said he thought he met Verveer on State Street during the 2008 calendar year. On the day they met, Schmidt was near the Plaza Bar and Grill and saw a memorial was being held outside. One of the persons at the memorial was Verveer. Schmidt recognized Verveer and went over and said hi to him. Schmidt said he had to remind Verveer who he was (someone who had come through criminal intake on a burglary charge) and thanked Verveer for requesting a signature bond. Schmidt also told Verveer it was his first time in jail and that he was scared. The two talked for awhile about the memorial and Verveer gave Schmidt a business card with his

cell number written on it. Verveer told him to call and let him know how Schmidt's burglary case was going.

Schmidt said that the first time he called the cell number on the card he got from Verveer was in June 2008 when he was arrested for felony bail jumping. Schmidt called from the jail and asked Verveer what was going to happen to him. Verveer told him that he would be in jail for a few days and then he would be released on some type of monitoring program. Verveer told Schmidt that it sounded to him like Schmidt was an alcoholic. In that same phone call, Schmidt had to identify himself a number of times by name before Verveer remembered that Schmidt was the person Verveer had met outside of the Plaza. Dane County District Attorney office files show that in June 2008, Schmidt had two different bail-jumping files pending, 08-CF-1169 and 08-CF-1075. The initials for Verveer showed he appeared at routine court appearances and in each case, the file notes reflect that the SPD (a common abbreviation for state public defender) made an appearance with Schmidt at any appearance that was also attended by Verveer in those files. Furthermore, the face of the outside of the file in 08-CF-1075, in the "defense attnys and phone" column reflects a listing of Debra Stroik. A review of the file does not reflect whether Debra Stroik is a member of the SPD, nor when it was that the representation of Debra Stroik would have begun in that file.

Schmidt stated that on March 17, 2008, he was arrested in Sun Prairie for stealing food and received a ticket and the ticket was sent to the DA's office. According to Schmidt, about two months later, Verveer called Schmidt and asked him about the circumstances of the ordinance charge from March. Verveer asked him if they could meet to discuss the case and they agreed Schmidt would go to the DA's office to meet with Verveer. During the meeting, Verveer said he felt the Sun Prairie cops had it out for Schmidt. Schmidt believed Verveer dismissed the charges and stated Verveer indicated the reason the charges would be dismissed was that he felt the matter should have been handled in Sun Prairie municipal court. A review of court records shows that Schmidt was charged in Dane County Case No. 08-FO-1099 and that Schmidt was charged with retail theft from an incident occurring on or about April 2, 2008, in the city of Sun Prairie. No records show any retail theft charges being prosecuted in Dane County Circuit Court for March 2008, and therefore this above-referenced case must be what Schmidt had been referring to and that Schmidt was incorrect in his belief of when the retail theft occurred. Court records further show that on April 14, 2008, the forfeiture complaint was filed, and on April 17, 2008, both Schmidt as defendant and Verveer appeared, and at that appearance the defendant entered a no contest plea, was convicted, and ordered to pay a forfeiture.

Later in the interview, Schmidt corrected himself saying it was during this meeting (at the Dane County District Attorney's office to discuss the retail theft citation) that he received Verveer's business card with his personal cell phone number written on it. In that same meeting, Schmidt told Verveer about being homeless. Verveer offered to drive Schmidt back to Sun Prairie and in fact gave him a ride during which they stopped along the way and Verveer gave

Schmidt money to buy cigarettes. They also stopped along the way for Schmidt to get something to eat at the IHOP. Verveer paid for the meal. During the meal, Verveer asked Schmidt why he was not living with a particular person nicknamed "Hobbs." Schmidt told Verveer that Hobbs' parents did not like him.

While Schmidt was eating at the IHOP they also discussed other things. Verveer told Schmidt that as an ADA, he had the power to have people arrested. Verveer told Schmidt he made about \$60 per hour and lived in a one-bedroom apartment. Schmidt said Verveer even showed him a bank statement. Verveer told him he had that much money because he did not have a wife or children. Verveer took Schmidt to Schmidt's parents' home where he sometimes stayed when he was not homeless. Verveer told Schmidt to call him if he ever needed anything and then left.

About a day and a half later, Schmidt was arrested for burglary and had been in jail for a number of days when he called Verveer. Verveer said that Schmidt and Hobbs would be getting out of jail but a third individual would not be getting out any time soon. There was no further discussion at that time. Schmidt thinks that he was subsequently released on a signature bond with conditions. A review of the Dane County District Attorney files for 08-CF-1031 show Schmidt was charged with the offense of burglary which was to have occurred on or about May 26, 2008, and on that complaint was joined by two co-defendants, one being Calvin Herschleb (a/k/a Hobbs), and Robert Walther. At the initial appearance on June 3, 2008, Schmidt and Herschleb each received signature bonds but Walther was ordered to post a cash bond.

Schmidt also recalled that he and his girlfriend were going to take a piece of birthday cake to Verveer and even told Verveer they would be bringing it, but were unable to do so because of the burglary arrest. When Schmidt and Verveer talked at other times after Schmidt was released on the signature bond for the burglary, if Schmidt's girlfriend came up in conversation, Verveer would refer to her as the birthday girl.

Schmidt recalled meeting with Verveer other times outside of the City-County Building on the weekends or after hours. Schmidt would call Verveer and the two of them would get together and sit outside and talk. Sometimes they would go inside and have a bottle of water or smoke a cigarette. Schmidt did not relay what the substance of those conversations was, other than one time he related that Verveer asked Schmidt how things were going.

Further on in the interview, Schmidt stated that the time he met with Verveer at the memorial outside of the Plaza, Schmidt had made arrangements with Verveer to meet there. Schmidt related he had trouble finding his way to the Plaza and called Verveer and got directions. Verveer bought Schmidt some soda while inside the Plaza and told Schmidt he knew

of a place where they could get free pizza. They did not go to the pizza place because Schmidt needed to get home.

Schmidt also recalled the time that he had a final pre-trial conference on one of his burglary charges. From the context of the conversation with Schmidt, it was obvious to Special Agent Lehmann that Verveer had not been at the final pretrial conference for Schmidt's burglary charge. Schmidt did not specifically say how he and Verveer came into contact that day, but said that when he had the opportunity, he said to Verveer, "Get me something to eat." Verveer told Schmidt that he could not leave the courthouse but told Schmidt to go downstairs to the cafeteria, and that once the lunch crowd left, he would come down and get Schmidt some lunch. Verveer also said it would not be a good idea for the two of them to be seen together. Schmidt went down to the cafeteria and Verveer eventually showed up, walked up to the line, and motioned for Schmidt to join him. Schmidt said he ordered a lot of food and Verveer paid for it. They had a brief conversation in which Schmidt told Verveer that he was sentenced to probation and 40 days. Schmidt also told Verveer that he was no longer on the sobrieter (a device which detects the presence of alcohol on a person's breath). Verveer stated that means now you can go out drinking. Schmidt said that he and Verveer made arrangements to meet and go drinking, but on the day they were supposed to meet, Schmidt did not show up because he was already drunk. Schmidt also recalled that on one occasion when they had contact (Schmidt did not recall when it was or what the circumstances were), Schmidt asked Verveer if he could borrow \$200 and Verveer said no. Schmidt said he and Verveer never had any other contact after the last time Schmidt failed to show up to go drinking as they had arranged.

Schmidt said that he was the one who pursued the friendship with Verveer and not the other way around. Schmidt said it seemed to him that Verveer never seemed to mind that Schmidt was calling him all the time, and that from Schmidt's perspective, Verveer never did anything wrong or acted inappropriately.

E. Justin Hilt

On December 12, 2008, Special Agents Lehmann and Strauss interviewed Justin P. Hilt. Hilt said he knew Verveer from various court appearances. The first time Hilt recalled seeing Verveer was when he had trouble in 2006 with some disorderly conduct tickets. Hilt said Verveer was the person who initially handled the cases in court for the DA's office. That was the extent of his contact with Verveer at that time. Hilt recalled there was a time when Verveer phoned him and asked Hilt to meet with him to discuss some charges Hilt had. They met at the City-County Building after Verveer had called Hilt to set up the meeting. They met inside and Verveer asked Hilt about his background and where he was from. Hilt recalled smoking in the room. Verveer told Hilt that he saw Hilt's juvenile record from Illinois and thought the DA in Illinois had been harsh on Hilt. Verveer discussed with him the different possible sentences Hilt could be facing. After about a half hour, Hilt left and that was the extent of their contact.

Hilt said that one time he ran into Verveer on State Street. Hilt recalled that Verveer did not recognize him but Hilt told him who he was and thanked Verveer for the reduction of charges. During the State Street meeting, Verveer told Hilt that he lived around the area and they parted company. The Special Agents specifically asked Hilt, when discussing the half hour meeting in the City-County Building, if Verveer ever told Hilt that he could help Hilt with his charges. Hilt indicated he had not. Furthermore, Hilt said that Verveer did not ask Hilt for anything to benefit himself, nor did Verveer ask for Hilt to do anything for Verveer in order to get a certain outcome on his charges. A review of the Dane County District Attorney office files from the period of time in which Hilt had cases in the Dane County District Attorney's office and Verveer was working there involved cases 07-CM-3193, 07-CM-3197, 07-CM-3669, 07-CT-3318, and 07-CM-4070. In each of those files the only involvement that Verveer had was his initials noted as the attorney appearing for the state at initial appearance and having no other involvement in the files. At the initial appearances no charges were reduced. Despite Hilt's assertion that Verveer had reduced his charges, a review of the files does not support that statement.

F. Andrew Holum

Special Agent Strauss interviewed Andrew R. Holum. Holum said his first contact with Verveer would have been in October 2008 after he had failed to appear in court for a second offense charge of operating while under the influence. In the evening on the night Holum failed to appear in court, Verveer called in on the cell phone of a person Holum was staying with and left a message for Holum to call him back at the office. Holum had provided this phone number to law enforcement when he was arrested. Holum called Verveer back and left a message. Verveer called for Holum on the friend's cell phone. Verveer told Holum that he missed his court date and that he wanted to meet with Holum and give him a "get out of jail free card." Verveer said that he liked to get drunk and smoke pot and when Holum said he did not smoke pot, Verveer called him a "pussy." Verveer said he did not like the way Holum's friend's stepfather had acted toward him when he called the house of Holum's friend looking for Holum. Verveer called the stepfather a "fucking faggot." Holum said most of the conversation was Verveer rambling on about the same things. Holum told Verveer he was interested in meeting and Verveer said that they should get together at about 9:00 p.m. the following night after an aldermanic meeting. Verveer said to call him around 9:00 p.m. and they would make arrangements to meet at a bar in the downtown Madison area. Verveer asked Holum if Holum was driving and Holum said he was not because his license was suspended. Verveer told Holum he should drive downtown anyhow because if he did get caught, it was just a ticket and he would not go to jail. Verveer also said that Holum was a pussy for not driving.

The next evening at about 9:00 p.m., Holum tried calling Verveer but got no answer. At about 3:30 a.m. or 4:00 a.m. the following morning, Holum got a phone call from Verveer.

Holum did not speak to Verveer, but Verveer left a message. Holum said Verveer sounded intoxicated and that it was not much of a message.

About a week later, Holum failed to appear for court, a warrant was issued and the police ended up at Holum's door. While the police were knocking, Holum called Verveer and Verveer told him not to open the door. Verveer went on to state that the police could not come into the apartment, so if Holum did not answer the door, they could not arrest him. Holum chose not to answer the door immediately, but did open the door when he thought the police had left. At that time, the officers were still standing out in the hallway and arrested Holum.

Holum sat in jail until his initial appearance, and when Holum appeared, Verveer was the prosecutor. Verveer requested and the judge ordered Holum released on a signature bond. After Holum's court appearance was done, but before Holum was actually released from custody, Verveer talked with him. Verveer said he was sorry they had to meet like that and apologized for Holum having to sit in jail so long (about 12 hours according to Holum). Verveer said it was the best he could do. Special Agent Lehmann's investigation with the Dane County Jail revealed that Holum was booked in on October 16, 2008, at 1:40 a.m. and released that same day at 5:22 p.m. - a period of just over sixteen hours.

Verveer did try calling Holum after that court appearance and sometimes would leave a message and other times would not. On the messages that were left, Verveer would say such things as how he would be able to get Holum out of trouble. Holum and Verveer did talk a few times over the phone, and each time the conversation centered around Verveer telling Holum what he could do to get Holum out of trouble. In one call, Verveer said that Holum should bring the paperwork to Verveer and Verveer would look it over to see if he could find any loopholes. Verveer also liked to talk with Holum about how Verveer liked to go to the bars after work. Holum told Special Agent Strauss that he did not ever ask Verveer why he wanted to help Holum. That was the extent of Holum's contact with Verveer. He never did go meet Verveer at a bar or anyplace else.

G. Christopher Frutiger

In April 2009, Special Agent Lehmann interviewed Christopher Frutiger. Frutiger stated he could not remember the specific dates but believed his contacts with Verveer occurred when he was 22 or 23 years of age (Frutiger's date of birth is August 1984). He said there was a Wednesday when he was scheduled to appear in court for operating after revocation. On the Friday following that appearance he was to appear in court for second offense operating while intoxicated. Verveer was the prosecutor at the initial appearance and he called Frutiger the Tuesday before in order to remind him of the hearings on Wednesday and Friday. Frutiger thought they talked for about an hour. In that phone call, Verveer asked Frutiger about the circumstances of his OWI and they set up a time to meet that Thursday at the City-County

Building in Madison at 9:30 p.m. Verveer said he wanted to help Frutiger and that they would discuss it further at the meeting. They met as planned and went inside. Verveer had all of Frutiger's paperwork for the OWI and said he was trying to see if he could get Frutiger's charge reduced. Verveer told Frutiger he could smoke if he wished. In addition to talking about the OWI, they also discussed friends of Frutiger's that Verveer said he had helped out in the past. Verveer asked Frutiger if he was married or had a girlfriend and asked about his family life. At the end of the meeting, Verveer told Frutiger that he would look everything over and see what he could do for Frutiger. Verveer gave Frutiger his cell phone number. Frutiger was asked if he had any other contact with Verveer. Frutiger said he had no other contact with Verveer until a chance meeting occurred with Verveer at Johnny O's Bar on University Avenue in Madison. Frutiger stated that he did not believe that Verveer actually did anything in his cases. A review of CCAP records (Case No. 2008-CT-129) indicates that the second offense OWI charge was not reduced. Verveer did attend the initial appearance in January 28, 2008. On March 18, 2008, Frutiger pled guilty to the charge and was sentenced. The plea hearing was handled by another assistant district attorney.

Frutiger believed that it was a mutual friend who called Verveer and that was how he and Verveer ended up at Johnny O's together at the same time. Frutiger was not asked and did not volunteer whether he and Verveer had any conversation while the two were at Johnny O's.

H. Blake Bradley

On February 23, 2009, Special Agents Lehmann and Fernandez interviewed Blake Bradley. Bradley said he could not remember the dates, but "a while ago" he received a ticket for underage drinking, attended a court date, and pled not guilty. Bradley failed to attend to the matter and later was reminded it was outstanding when he was dealing with other court problems. Thereafter, he went to the DA's office where he was put in touch with Verveer. After Bradley explained his situation, Verveer told him he would look up the case and they could discuss it further.

About two weeks later, he and Verveer met at the City-County Building in what Bradley believed was Verveer's office. Verveer expressed disbelief that the ticket had been outstanding for a year without a resolution. Bradley told Verveer he did not think the ticket had been issued fairly. Verveer gave Bradley some paperwork to sign which Bradley understood meant that the ticket would be dismissed. According to a review of the Dane County District Attorney file in 07-FO-2950, as well as CCAP records, show that an offense for underage drinking occurred on August 16, 2007, and on that same date a citation was issued which citation was filed with the court August 22, 2007. On September 6, 2007, a not guilty plea was entered and on January 14, 2008, Bradley signed a document entitled "Stip and Order" in which a box was checked noting dismissed charge, which document also appeared to have the signature of Verveer. A dispositional order/judgment dismissing the case was entered by the court also on January 14,

2008. That was the end of the meeting and there was no further contact between Bradley and Verveer.

Throughout the contacts, Verveer did not try to obtain any dishonest advantage for himself or for anyone else. Furthermore, Verveer neither solicited nor accepted anything of value for the performance of his duty.

I. Andrew Eastman

A report of Detective Bongiovani of the town of Madison Police Department reflects that on September 22, 2009, he interviewed Andrew Eastman. During that interview, Eastman related that about two years earlier, he received a phone call at about 11:45 p.m. one night. The caller identified himself as Mike Verveer and said that he works in the district attorney's office. Verveer told Eastman that he was going to be charged in a felony drug case and asked Eastman if he wanted to meet with Verveer. Verveer also asked Eastman if he wanted to smoke a bowl when they met. Eastman said he never met with Verveer and that was the extent of his conversation with Verveer at least as reported by Detective Bongiovani. Eastman said his recollection was that he did have a drug case and that the district attorney assigned to it was Brian Asmus. Eastman further stated that Verveer called him out of the blue.

Throughout the contacts, Verveer did not try to obtain any dishonest advantage for himself or for anyone else. Furthermore, Verveer neither solicited nor accepted anything of value for the performance of his duty.

J. Daniel McCarthy

On June 24, 2010, Special Agents Engels and De la Rosa interviewed Daniel McCarthy. McCarthy said he was involved in a physical altercation with a Joseph Goldfine in Madison and was eventually charged by the Dane County DA. McCarthy hired Attorney Brian Brophy to represent him. McCarthy stated that after he believed that Brophy was representing him and before his initial appearance, McCarthy got a call on his cell phone from a person identifying himself as Michael Verveer. Verveer said something about being with the DA's office and handling student cases. Verveer talked with McCarthy about moving the court appearance so as not to have a conflict with McCarthy's spring break. McCarthy told Verveer that he had Brophy as an attorney and the two discussed the efficacy of having an attorney in the case. McCarthy declined Verveer's offer to move the initial appearance date. McCarthy said he eventually was convicted of disorderly conduct and had to pay a fine. A review of CCAP records supports McCarthy's recollection. Those records show an initial appearance on March 17, 2008, in which Verveer appeared for the state and conditions of the bond indicated that McCarthy was not to have contact with Joseph G., nor to be at or around Amy's Café (the place where McCarthy said the altercation with Goldfine occurred). The case was resolved in May of 2008.

McCarthy further reported that in the period of time between January and April of 2009, he was out in Madison and saw Verveer sitting at a table with Goldfine, and that at one point Verveer got up and approached McCarthy and talked to McCarthy. McCarthy made comments to Verveer about the fact of Verveer handling McCarthy's case and Verveer having an apparent association with Goldfine. McCarthy said Verveer left with Goldfine and believed Verveer was intoxicated.

Special Agent James Engels, armed with a waiver of attorney/client privilege form signed by Daniel L. McCarthy, followed up with his former counsel, Attorney G. Brian Brophy. Attorney Brophy did not have any information about any actions, behaviors, or words of Verveer that suggested or implicated in any way any criminal behavior by Verveer. Brophy's recollection and review of the file did not reveal any contact between Attorney Brophy and ADA Verveer. Special Agent Engels reviewed the file and did not find any documentation in the file that established any contact, or the nature of contact between McCarthy and Verveer.

Joseph Goldfine was interviewed on July 22, 2010, by SA Engels and SA De la Rosa. Goldfine said that he had been himself issued a citation and was the subject of a prosecution in August of 2006. Verveer was the member of the Dane County DA's office that Goldfine talked to and Verveer dismissed the action. Goldfine recalled being the victim in the case involving McCarthy. Goldfine believed the only contact that he had with the DA's office was through the victim/witness coordinator. Goldfine was certain that he never had any contact with Verveer about what the disposition in the McCarthy case should be. Goldfine further stated that he is not friends with Verveer and has no social relationship with Verveer. Any contact that Goldfine had with Verveer appears coincidental, or what might be characterized as chance social encounters. Goldfine was also of the opinion that Verveer did the right thing in dismissing Goldfine's citation because, in the opinion of Goldfine, there was a true lack of prosecutive merit.

Neither McCarthy nor Goldfine stated during their interviews that Verveer tried to obtain any dishonest advantage for himself or for anyone else, nor did Verveer solicit or accept anything of value for the performance of his duty.

K. Derek Larosh

Larosh was interviewed by Special Agent James Engels. Larosh had contact with a Dane County prosecutor who he believed was Verveer. Larosh believed that the first contact was during a bail hearing or initial appearance back in September of 2007. (Engels' review of CCAP shows Larosh made an initial appearance in Dane County Case 2007CF1779 on Wednesday, September 12, 2007, which lists the prosecutor as Michael Verveer.) Larosh stated that after the initial appearance, he was at the home that he shared with his mother when a call came in from a person introducing himself as Michael Verveer, the prosecutor from the court appearance (Larosh was released on a signature bond). Larosh described the contact with Verveer and

recalled, in general terms, that Verveer invited Larosh to meet Verveer and discuss resolution of the case, and in particular the first offender program. Larosh never took Verveer up on the offer and obtained representation in the matter. Larosh and Verveer never had any contact after that. Larosh exhausted his recollection of events as to his contacts with Verveer. Larosh did not state during the interview that Verveer ever made any statements in which he tried to obtain any dishonest advantage for himself or for anyone else, and further did not state that Verveer ever tried to solicit or accept anything of value for the performance of his duty.

L. Michael Verveer

On April 10, 2009, Special Agent Lehmann called Verveer at _____ which number was believed to be the residential telephone. The purpose was to discuss with Verveer the DCI investigation. There was no answer and Special Agent Lehmann left a detailed message and a telephone number where Verveer could call for Special Agent Lehmann.

On April 12, 2009, Special Agent Lehmann received a voicemail from Attorney Eric Schulenburg saying that he had been retained by Verveer and asked Special Agent Lehmann to call him back. Special Agent Lehmann called back on April 14 and spoke with Schulenburg telling him that she wished to interview Verveer regarding the investigation. Schulenburg said he would talk with Verveer and get back to Special Agent Lehmann. On April 16, Special Agent Lehmann received a voicemail from Schulenburg saying that he and his client Verveer were declining an interview with Special Agent Lehmann.

On December 14, 2010, Special Agent Engels inquired of Attorney Schulenburg whether Michael Verveer was interested or willing to, at this point in time, grant an interview to law enforcement regarding the investigation. On December 15, 2010, Attorney Schulenburg informed Special Agent Engels that he had consulted with his client about granting an interview, and Attorney Schulenburg and Michael Verveer were not going to be granting an interview.

V. ANALYSIS

For purposes of this analysis I am assuming that Verveer did in fact make the statements attributed to him by the above-referenced individuals. While the individuals all have had some legal problems which may reflect upon their credibility, the reports of their contacts with Verveer are generally consistent. As noted above, Verveer declined an opportunity to provide information in this matter. Nevertheless, as explained below, even assuming the events and statements as described by the witnesses are truthful and accurate, I cannot find they constitute violations of any criminal laws.

A. Misconduct in public office: Wis. Stat. § 946.12.

There are several misconduct charges that I considered. Wisconsin Stat. § 946.12 begins with the proposition that any public officer or public employee who does any of the prohibited conduct enumerated in the numbered subsections is guilty of misconduct in public office. Applying the facts obtained during the investigation to the elements of this offense, the analysis begins with whether or not Verveer is a public officer or public employee. Wisconsin Stat. § 939.22(30) sets forth the definition of public officer and public employee and as to a public employee reads: A “public employee” is any person, not an officer, who performs any official function on behalf of the state or any one of its governmental units and who is paid from the public treasury of the state or subordinate governmental units. An assistant district attorney would qualify as a public employee.

The first misconduct charge I considered is set forth in Wis. Stat. § 946.12(2) which prohibits:

In the officer’s or employee’s capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer’s or employee’s lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer’s or employee’s official capacity

A prosecutor has a broad range of discretion when it comes to matters such as deciding what sort of recommendation to make to the court for a defendant’s bond or bail, whether a warrant should be issued based on a non-appearance or an adjournment granted, or whether a non-criminal forfeiture offense like that of underage drinking or a criminal charge should be amended, reduced, or dismissed. Any such discretionary act requires the weighing and balancing of a myriad number of factors and variables that contribute to the ultimate determination of how the prosecutor exercises their discretion. There often can be a wide variance and oftentimes spirited disagreement between prosecutors in the same office as to which factors should be considered, how to weigh them and view them, and what is a just or fair recommendation or result in any given case. Whether a prosecutor is motivated by an interest in achieving a just result or whether, for instance, they are motivated by a desire to curry favor, or engender or endear themselves to the defendant or some other person, or if they have some other ulterior motive, will in many cases be difficult-if not impossible to determine. Absent clear evidence of inappropriate motives or purposes, the exercise of prosecutorial discretion is usually not subject to challenge. While the nature, circumstances and extent of Verveer’s contacts with defendants is certainly unusual and his statements directly or indirectly offering assistance suspicious, the fact remains that he did not directly suggest he was seeking something in return for his proffered assistance, did not condition his offers of assistance, and did not accept anything in return for his actions. In many instances, Verveer actually did not provide any assistance in the disposition of the cases. Under all the facts and circumstances of the cases cited above, there are no facts that

would constitute proof that Verveer inappropriately exercised his discretion or knowingly exceeded his lawful authority. There is no evidence that would prove, beyond a reasonable doubt, that Verveer did any act that he knew was in excess of his authority or that he was forbidden by law to do in his official capacity.

The second misconduct charge I considered, Wis. Stat. § 946.12(3), provides:

Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duty of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another.

While I am confident the state could prove that Verveer was a public employee, I do not believe it could meet its burden for the element which requires a showing that Verveer's actions were done with "the intent to obtain a dishonest advantage" for himself or another.

The statements provided by the witnesses in this case were for the most part consistent. Many of them asserted that Verveer offered to provide favorable treatment or assistance in the handling or disposition of their cases. For instance, Verveer told Jensen they should meet and see how Verveer could help him and Verveer later advised Jensen to call in sick for a court date so he would not get arrested; Verveer recommended a signature bond at Redepinning's OWI third offense initial appearance; Verveer told Holum he wanted to give him a get out of jail free card and later when the police were knocking at Holum's door, advised Holum that the police could not come in to his apartment to get him and that if he did not answer the door, the police could not arrest him. However, such offers or actions are not, in themselves, a violation of the statute.

The constituent parts of the offense are stated in the conjunctive by the use of the word "and" such that the proscribed conduct which precedes the word "and" is criminalized only if it is also accompanied by the requisite intent. In the case of misconduct in public office under Wis. Stat. § 946.12(3), the requisite intent is an intent to obtain a dishonest advantage for the officer or employee or another. Wis. JI-Criminal 923a provides guidance as to how a factfinder decides intent. It reads in pertinent part: "You cannot look into a person's mind to find intent. Intent to obtain a dishonest advantage must be found, if found at all, from the acts, words, and statements, if any, and from all the facts and circumstances bearing upon intent."

The words, acts, and circumstances of the above incidents do not establish, beyond a reasonable doubt, that Verveer had an intent to obtain a dishonest advantage for himself or another. As set forth in the factual summaries and as discussed above, there are no words, acts or circumstances that would show or prove any advantage being sought or obtained by Verveer

for himself or another. In some instances, while Verveer may have provided some of the named persons with an advantage, there is no basis to conclude that this was dishonest. Again, prosecutors enjoy considerable discretion in making arguments for bail or disposing of charges. In addition, and as also already noted, in many cases the defendants did not actually receive any advantage from Verveer. Therefore, there is an insufficient basis to conclude that Verveer exercised a discretionary power in a manner inconsistent with his duties or that provided a dishonest advantage to himself or another.

The third and final charge of misconduct I considered is set forth in Wis. Stat. § 946.12(5), which proscribes the following conduct:

Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

Again, the key element is the intent element which requires intentionally soliciting or accepting anything of value for the performance of one's duty. None of the persons contacted by Verveer stated that he solicited anything from them, much less anything of value, or in exchange for, or in return for, the performance of his duty. Furthermore, none of the witnesses stated that Verveer received anything of value from any of them. Consequently, there is no proof to support this key element.

B. Ethics violations: Wis. Stat. § 19.45(3)

Wisconsin Stat. § 19.45(3) regarding standards of conduct for state public officials states as follows:

No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official.

Like the discussion of Wis. Stat. § 946.12(5) above, since none of the persons contacted by Verveer offered or gave him anything, and since Verveer neither solicited or accepted anything of value, the core requisite acts are absent and no violation occurred.

VI. CONCLUSION

The initial purpose of this investigation was to determine whether Michael Verveer, while acting in his capacity as an ADA for Dane County, violated any criminal laws as a result

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of his interactions with criminal defendants. The scope of the investigation broadened to include all possible criminal conduct implicated as a result of information learned during the investigation. While aspects of Verveer's conduct may have been inappropriate, unprofessional, and contrary to the interests of his employer, I cannot find that any of Michael Verveer's conduct was criminal in nature.

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