

75 / 123 - Friday, November 1, 2002

Edition: ALL

Section: FRONT

Page: A1

Byline: Dee J. Hall, Phil Brinkman and Andy Hall Wisconsin State Journal

Illustration: Photo of **Vince Biskupic**

WSJ graphic

Source: John Mortenson, Jones Sign Co.

Jones Sign Co. deferred prosecution agreement

Dateline: APPLETON

## DEALS BY **BISKUPIC** GENERATE QUESTIONS IN SOME CASES, HE AGREED NOT TO FILE CHARGES IF DONATIONS WERE MADE TO CRIME PREVENTION AND VICTIM ADVOCACY GROUPS.

Outagamie County District Attorney **Vince Biskupic** released records Thursday detailing how his office collected and spent money in a special crime prevention account.

But the documents, released in response to separate requests by the Democratic Party of Wisconsin and the Wisconsin State Journal, shed little light on the thousands of dollars in donations to crime-prevention and victim advocacy groups that **Biskupic**, the Republican candidate for attorney general, has negotiated with defendants to avoid prosecution.

The records released Thursday show only the money **Biskupic's** office raised each year since 1994 for community crime prevention efforts. Never more than \$8,000, the fund pays mostly for a contest in which children design pictures for a say-no-to-crime-type calendar.

Established mostly through corporate donations, the fund is supplemented with payments by offenders as part of negotiated agreements to defer or dismiss prosecution. Most of those agreements are approved by a judge after a person has been charged, although some are negotiated before any charges are brought.

That has sparked allegations by the Democratic Party that **Biskupic** may be providing special treatment for people who can afford to make the contributions. If the case is settled before charges are filed, the offender can remain nameless.

"What's troubling to me is those agreements that were made in lieu of even charging someone that never will see the light of the courthouse," said Mike Bauer, the Democratic Party's attorney, which sued to release the records.

Among the cases not covered by Thursday's release of documents is a 2000 case in which **Biskupic** told the president of a Green Bay sign company he could avoid criminal charges in a dispute with a car wash if he paid \$10,000 to **Biskupic's** crime prevention fund.

Jones Sign Co. President John Mortensen said in an interview that he was stunned by **Biskupic's** threat to charge him with two felonies -- theft and criminal damage to property --

since he believed the dispute over non-payment and removal of the sign had been settled with the owner of the Clear Water Car Wash in Appleton nearly two years earlier.

According to Mortensen, his company and the car wash had a dispute in 1998 over the cost of the work Jones did. In response, his company removed the sign, in the process cutting some wires, he said. However, Mortensen said the two sides came to an agreement, and the sign was down for just one day.

Mortensen eventually agreed to make an \$8,000 "donation" to **Biskupic's** recommended charity, Harbor House, an Appleton domestic-violence shelter, to avoid criminal charges. Mortensen, who said he has no criminal record, also was ordered not to commit any crimes over the next 15 months as part of the "deferred prosecution" agreement.

"I remember at the time telling my attorney, 'I felt like we just got shaken down.' I remember thinking, 'This is Appleton -- not Chicago,'" Mortensen said.

**Biskupic** defended the practice of negotiating agreements that include payments before charges are filed. He said he takes into account the charge, the victim's wishes and the offender's background, level of remorse and willingness to work with law enforcement.

In some cases, prosecutors may lack the evidence for a conviction, but the offender is willing to contribute to a worthy cause or perform community service, **Biskupic** said. Yet, unlike court-ordered payments, the public is not informed of who is getting that treatment. **Biskupic** said accountability for those decisions is simply part of the broad discretion prosecutors are given.

"The role of the prosecutor is to try and resolve the case in a fashion the parties feel is just," **Biskupic** said.

**Biskupic** estimates that he draws up "less than 10" cases a year in which a defendant agrees to make a contribution as part of a plan to avoid prosecution. His Democratic rival, former U.S. Attorney Peg Lautenschlager, who also was a district attorney in Winnebago County, said she's never struck such a deal.

"It should not be dependent on a defendant's ability to pay -- that's an absolute to me," Lautenschlager said. "I think in the public's mind, it smacks of paying your way out of jail, and that's inappropriate."

In April 2000, a month after the Jones Sign Co. case was resolved, Wisconsin enacted a law that bans the reduction or dismissal of charges in exchange for payments to crime-prevention organizations. The Supreme Court committee that recommended the law said it was concerned about the "reality or the perception" that contributions and the ability to pay could influence charging decisions by prosecutors.

However, **Biskupic** said the law doesn't prohibit such "pre-filing" agreements. "The specific law focused on charged offenses," he said, not "pre-charged" cases.

A fellow Republican, Jefferson County District Attorney David Wambach, agreed. Wambach added he believes such agreements are legal so long as other conditions are included, such as abstaining from criminal activity for a specified length of time.

Nevertheless, Waupaca County Circuit Judge Phillip Kirk said such payments-in-exchange-for-prosecution agreements as the Jones Sign Co. case are the type Wisconsin's chief judges sought to eliminate by changing the law.

Kirk said the idea in passing the law was that, "If justice was for sale, it would stop."

Legal experts disagreed Thursday over the ethics of entering such arrangements. Two Wisconsin experts said state law and court decisions grant prosecutors a great deal of discretion to negotiate deals with people suspected of wrongdoing before they're charged.

Gordon Baldwin, a member of the state Ethics Board and an emeritus professor of law at the UW-Madison Law School, said the public needs to understand that "a district attorney is not a mechanic. He's an exerciser of public office." It's up to the public to determine whether a district attorney properly uses his discretion, Baldwin said, adding, "If he does it badly, we throw him out of office."

Ben Kempinen, an associate clinical professor at the Law School, echoed many of Baldwin's statements, though he questioned whether such agreements are "inconsistent" with the 2000 law. He added he was "troubled" by the fact that such deals are "only available to wealthy

people. I don't see it as inherently evil, but it does create a tremendous disparity between the wealthy and the poor."

Said Jones Sign Co. attorney Larry Vesely of Green Bay: "It was quite obvious to me that **Biskupic** knew my client had money. It (negotiation) didn't pass the smell test. To this day, it sits very poorly with me."

Another case in which a defendant avoided the filing of criminal charges by paying money to a non-profit organization occurred in early 2000, according to defense attorney Gordon Stillings of Neenah.

"I had a client with an offense which was probably chargeable but which was very sensitive," Stillings said. Had the man been charged, Stillings said, "it would have made things very difficult for him professionally and personally."

Stillings said to avoid prosecution, his client agreed to pay an amount between \$5,000 and \$10,000 to a non-profit group, and he agreed to keep out of legal trouble. Stillings would not provide specific details because his client paid the money to remain anonymous.

Gene Bartman, supervisor of the Appleton trial office of the State Public Defender, said not charging a defendant in exchange for money raises questions of fairness for low-income clients.

Bartman, who has worked in the office 11 years, said he was surprised to learn of the practice in recent days as a result of the Democratic Party lawsuit. No such offers to avoid charges have been made to the 3,000 clients represented annually by his office, Bartman said, adding, "We don't often get clients who have an ability to pay."

Even if they could pay, Bartman said, the whole practice is wrong.

"The idea of doing justice in a case should have absolutely nothing to do with income or ability to pay," Bartman said. "It should have to do with bigger values like fairness, the victim's wishes and also considering what's fair in a situation."

Payment of money, he said, should be a factor only in monetary crimes, or in the payment of restitution or tardy debts. In addition, Bartman said, the payment of money "potentially corrupts the process. It distorts the public's perception of how the court system works."

**Keywords:** ELECTION LAW JUDGE COURT AGENCY MONEY CRIME INVESTIGATION  
OUTAGAMIE COUNTY

**ID:** 523783

**Tag:** 0211010042