



**JUDGE DAVID T. FLANAGAN**  
Dane County Circuit Court, Branch 12  
210 Martin Luther King Jr. Blvd., Room 313  
Madison, Wisconsin 53709

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Court Reporter

December 6, 2005

Kurt Benkley  
Assistant District Attorney  
Office of the District Attorney  
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821 West State Street  
Milwaukee, Wisconsin 53233-1485  
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re: State v. Charles Chvala, Case No. 02 CF 2451

Dear ADA Benkley:

The court has had the opportunity to review the State's Sentencing Memorandum filed December 5, 2005.

The question of restitution must be carefully considered in light of the nature and the scope of the convictions rendered October 25, 2005. The prosecution suggests that it will not be possible for the court to determine reasonably the appropriate amount of restitution because individual employees of the Senate Democratic Caucus may not be able to state with certainty the exact proportion of state time devoted to partisan campaigning. Experienced prosecutors are accustomed to the obligation to prove a criminal charge to the highest burden applicable in Wisconsin courts, proof beyond a reasonable doubt. By sharp contrast, the burden of proof that the prosecution must carry as to restitution is the preponderance of the evidence, the lowest burden of proof required in our courts.

Certainly, the ideal would be to set restitution precisely but that cannot always be done with exact certainty. Virtually every day, civil juries are asked to award damages in which the plaintiff's burden is precisely the same burden applicable to a restitution issue, preponderance of the evidence. Those juries are instructed that damages "cannot always be made exactly or with mathematical precision; you should award as damages amounts that will fairly compensate" for the injury sustained, Wisconsin Jury Instruction – Civil 1700, in part. Here, it is undeniable that the public has been seriously injured. A thorough effort to gauge that injury is required.

The complaint filed October 17, 2002 represents an extraordinary investigative effort. In 67 pages and 267 paragraphs it sets forth a remarkably comprehensive, detailed account of the offenses charged. Looking only to that complaint, that is, looking only to evidence available over three years ago, it appears possible to derive a reasonable estimate of much, if not exactly all of the loss sustained by the taxpayers of Wisconsin as the direct result of crimes which have now been acknowledged by the defendant.

The defendant has rendered a plea of guilty to Count Nine and has accepted Counts Seven and Ten as read-in counts. Each of the three is a felony charge of misconduct in public office based upon using state employees and state resources to conduct partisan political campaigns. The complaint offers an extensive factual basis for these three counts, set out in 66 paragraphs spread over twenty-two pages of the complaint. The complaint sets out the names of eighteen individual state employees involved in the campaigns; two employees of the defendant's Senate office, fourteen members of the Senate Democratic Caucus staff and two Caucus employees who supervised that staff. The complaint suggests that the starting annual salary of one particular Caucus staff member was \$36,000, para. 54, but in any event, the complaint sets forth the time period as to each of the three criminal charges and it surely is possible to determine accurately the salary rate for each of the eighteen individuals for the time periods in question as a starting point for a reasonable estimate.

As to Count Seven, the complaint states that a specific employee worked part time on a specific campaign beginning in June, 1999 and continuing until she was replaced by another specific Caucus employee, reportedly in June, 2000, paras. 50, 53, 106 and 108.

As to Count Nine, the complaint names six Caucus employees and refers to campaign graphics work apparently performed by a seventh employee, paras. 69, 70, 73, 74, 76, 78, 79 and 81-87. The complaint states that,

planning for the election campaigns would start in the January of the election year and by the spring of the election year an SDC staffer would be assigned to run the campaign in each important State Senate district and a campaign plan would be established. From the spring of each election year through the summer the majority of the Senate Democratic Caucus staff work and their first priority was campaign work. Ms Richard stated that from September until the election in November, SDC staffers would be working almost exclusively on campaign and that very little policy work would be done during those months.

Complaint, para. 66, emphasis added,

The foregoing estimate, reportedly provided by one who was supervising the Caucus staff, suggests a basis upon which, in conjunction with other information developed in anticipation of trial, it may well be possible to prepare a reasonable and fair estimate of the time spent by the seven Caucus staff members.

Looking to Count Ten, the complaint names seven individual caucus employees and two employees of the defendant's Senate office and describes numerous, specific campaign assignments, paras. 99, 100, 106-111, 113, 119 and 122.

Ms. Lynch stated that the campaign time went up in August and then again significantly in September to approximately 30 hours per week.

Complaint, para. 110.

**Mr. Walter testified that going forward from June of 2000, approximately 40% of his time at the caucus was spent working on the Hansen campaign.**

Complaint. para. 119, emphasis in the original.

Again, it appears that the above information, together with what must have been careful trial preparation involving the named caucus employees, may provide an adequate basis for a fair and reasonable estimate of restitution in this matter. At the very least, this possibility must be conscientiously explored and a full public record be created.

The court is aware of the enormous effort, skill and resources that you, Assistant District Attorney David A. Feiss and the staff of the Office of the Milwaukee District Attorney have committed to this matter for a very significant period of time, an investigation that began well over four years ago. The court does not intend to suggest that a fair and thoughtful proposal for restitution could be prepared easily. It is the view of the court, however, that restitution as a remedial concept is very important in this matter. Restitution must be carefully evaluated even if a serious, fair consideration may prove to be demanding and difficult.

Yours very truly,

Judge David Flanagan

cc: Attorney James A. Olson FAX to 608-282-6252

G:02CF2451.L29



## OFFICE OF DISTRICT ATTORNEY

# Milwaukee County

E. MICHAEL McCANN • District Attorney

December 9, 2005

The Honorable Judge David T. Flanagan  
Dane County Circuit Court, Branch 12  
City-County Building, Room 313  
210 Martin Luther King Jr. Blvd.  
Madison, Wisconsin 53709

Subj: State v. Charles Chvala, Case No. 02CF2451;  
Restitution information

Dear Judge Flanagan:

This letter is in reply to your letter dated December 6, 2005 concerning restitution for defendant Charles Chvala's misappropriation of State of Wisconsin resources.

The Senate Democratic Caucus (SDC) employees did spend substantial State time on partisan election campaigns. The taxpayers of the State of Wisconsin paid for this misuse of public resources. However, as discussed in the State's Sentencing Memorandum, it is exceedingly difficult to quantify the amount of State time which defendant Chvala is responsible for misappropriating.

Section 973.20(1r), Wis. Stats. mandates that, when imposing sentence, "the court... shall order the defendant to make full or partial restitution..." The Plea Agreement is silent as to the issue of restitution, and, for the reasons stated in the State's Sentencing Memorandum, the State is not proposing a restitution figure.

The State provides the following information to assist the court in its own determination of restitution:

- (1) All memoranda of interviews of SDC employees (Enclosure 1),
- (2) Payroll record for SDC employees (Enclosure 2),
- (3) Vacation /sick leave reports for SDC employees (Enclosure 3).

Based upon previous correspondence, the State understands the court has access to transcripts of John Doe testimony of SDC employees.

Two issues hinder exact accounting of State time which SDC employees devoted to partisan election campaigns. First, some SDC employees assert they accumulated compensatory time and used this time when working on election campaigns. However, the SDC maintained no compensatory time records. Vacation/Sick Leave Reports

Robert D. Donohoo  
Jon N. Reddin  
Patrick J. Kerney  
Lovell Johnson, Jr.  
James J. Martin  
Thomas A. Schulz  
Alexander G. Stenarz  
William J. Molitor  
Donald B. Jackson  
Gale G. Shelton  
Terry Magowan  
Gary D. Mahkon  
David Rotkin

Darrah Dolcy  
Peg Terrant  
Douglas J. Simpson  
Cynthia G. Brown  
Norman A. Gahn  
Stephanie Ginens Hothstein  
Carol E. Jwack  
Steven H. Glemm  
Mary Anne Smith  
Mark S. Williams  
Linda Johnson  
John M. Stoller  
Thomas L. Potter  
David Fless  
Rayann Chandler Szychinski  
Carole Manchester  
Kenneth H. Berg  
Reebow P. Cheesman, Jr.  
Warren D. Zier  
Timothy J. Colter  
Carol Berry Crowley  
Steven V. Licala  
Brad Vorpahl  
Jane Oumil  
Paul Tiffe  
Miriam B. Folk  
Phyllis M. DeCarvalho  
Dennis P. Murphy  
Christine M. Kraus  
Philip A. Arlett  
Thomas J. McAdams  
Bruce J. Landjeal  
Dennis J. Stiggl  
David M. Lemann  
Janet C. Protasiewicz  
DeAnn L. Heard  
Patricia A. McGowan  
Irene E. Parthun  
Karen A. Loobal  
Nancy Etterholm  
Ronald S. Dague  
Lon S. Korbium  
Karinne O'Byrne  
Maria Dorsey  
James W. Fritsch  
Kurt B. Benkley  
James C. Griffin  
William P. Papp  
Audrey Skwierzawski  
Joanne L. Hardtke  
John T. Chesholm  
Christopher A. Liegel  
Megan P. Camody  
Laura A. Crivello  
Shawn Pompo  
Brian J. Restor  
Kevin H. Shomin  
Jennifer Ruppel  
Beth D. Ziegler  
Karen A. Vreepinc  
Rebecca F. Dallet  
Mark A. Sautzner  
Paul C. Dednaky  
David T. Milner  
Kelly L. Hedge  
Jeffrey J. Altewitz  
Rachael Stencel  
Patti Wabitsch  
Kent L. Lovern  
Bruce W. Backer  
Michael T. Mahoney  
Mary M. Sowinski  
Kathryn K. Samer  
Jeanette Corbett  
Jeffrey P. Greipp  
Thomas C. Binger  
David Meas  
Jeremy L. Flesar  
Daniel J. Galtier  
Sara P. Soulen  
T. Christopher Deo  
Katherine Kucharski  
Lisa P. Fincker  
Tiffany J. Hams  
Daniel H. Humble  
Jacob O. Corr  
Joy Hammond  
Trevor A. Sisk  
Andrew J. Maier  
Heldi E. Galvan  
Nancy A. Noet  
Elizabeth Mueller  
Megan J. Thomas  
Grant I. Huebner  
Stephen Edward Nollan  
Eric D. Doherty  
Chaimae M. Quinn  
Michelle A. Ackerman  
Adam J. Levin  
Scott A. Melke  
Jennifer K. Rhodes  
Claire Stirling  
Zach Whitney  
Rebecca A. Kiefer  
Matthew J. Torbenson  
Kathryn L. Crudek  
Jason M. Kueckelner  
Carrh Helwig  
Mathew Andres  
Gibbert Urter  
Jenna Merten  
Anthony White  
Antoni Apollo  
Julia Caran  
Nicole Dondlinger  
Erin Karshen  
Lucy Kronstro



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(Enclosure 3) for SDC employees do not provide for compensatory time. SDC employee Carrie Lynch stated "she didn't remember the specifics about comp time" and that "she did not keep track of accumulated time." Interview of February 2, 2002 at page 2 (Enclosure 1). Indeed, compensatory time was little more than a pretense to rationalize campaign work at the SDC. SDC Director Gussert stated as follows.

The only thing Chvala told him was to make sure SDC employees took vacation or compensatory time if they were seen by outside people working on campaigns. Chvala was concerned about getting caught and did not appear to be concerned about the fact that it was wrong to have state employees working on campaigns while on state time. Interview of July 9, 2002 at page 7 (Enclosure 1).

Though not memorialized in any written report, in preparing to testify at trial, Mr. Gussert told prosecutors that SDC employees earned, rather than expended, compensatory time when working long hours on election campaigns.

A second difficulty is determining how much legitimate policy work SDC employees performed during election season. Defendant Chvala does not dispute SDC employees worked on election campaigns. He argues, however, this campaign work was performed in addition to a regular 40 hours per week of legitimate work at the SDC. No records exist allowing prosecutors to determine, with any exactitude, how many weekly hours of legitimate work SDC employees did during election season. We are left with broad, and sometimes conflicting, characterizations by the employees and their supervisors.

SDC Director Joanna Richard stated "[f]rom September until the election in November 1998, the SDC staff members were working almost exclusively on campaigns." Interview of July 2, 2002 at page 3 (Enclosure 1). She described SDC employee Julie Laudrie's election campaign work as follows: "[s]he did not believe Laudrie had enough vacation or compensatory time to cover the amount of time that she worked on Erpenbach's campaign." Interview of July 2, 2002 at page 1 (Enclosure 1). Vacation/Sick Leave Reports for September-November 1998 show Ms. Laudrie reported just six days of vacation time. (Enclosure 3).

SDC employee Wendy Kloiber worked almost exclusively on campaigns during Fall 2000. She stated that defendant Chvala initially told her "she was being hired to run the Alice Clausing race." Interview of April 8, 2002 at page 1 (Enclosure 1). Thereafter, Ms. Kloiber was reassigned to work on senate candidate David Hansen's campaign. Ms. Kloiber explained "[t]here was no question that Chvala knew she was working full-time on the Hansen campaign." Interview of April 8, 2002 at page 3 (Enclosure 1).

Referring to the 1997-1998 time frame, SDC employee Julie Laudrie told prosecutors as follows.

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...[D]uring a 24 month period state caucus workers concentrated primarily on budget work until the election cycle at which time state caucus workers devoted approximately 90 percent of their time to campaign work. Laundrie agreed that she worked at least 90 percent of her time for Erpenbach during his elections from her state office and on state time. Interview of July 18, 2002 at page 1 (Enclosure 1).

However, when prosecutors interviewed Ms. Laundrie in preparation for her trial testimony this Fall, she was less certain and more vague as to exact percentages of time.

Additionally, the court should consider that SDC employees varied as to the amount of state time each spent on election campaign work. SDC employees assigned to more hotly contested Senate races worked the most on campaigns. SDC employees assigned to less challenging campaigns devoted fewer hours. In 1998, the following assignments were made to top tier campaign races: Julie Laundrie (candidate Erpenbach), Lance Walter (candidate Robson), Jay Wadd (candidate Plache). In 2000, the top tier campaign assignments were: Carrie Lynch (candidate Clausing), Wendy Kloiber and Lance Walter (candidate Hansen), and Jay Wadd (candidate Meyer). Additionally, SDC employees Branda Weix, Joel Gratz, and Cindy Maracek devoted substantial state time to campaign work. Ms. Weix and Mr. Gratz maintained SDC databases used for fundraising and other campaign efforts. Ms. Maracek was the SDC computer graphics technician. She prepared campaign literature using State computers and printers.

The State is willing to provide such further information concerning restitution as the court may direct.

Respectfully submitted,



Kurt Benkley  
Special Prosecutor for ~~Dane~~ County

Enclosures

cc: James Olson, Esq. - w/enclosure  
David Feiss, Esq. - w/enclosure