



October 25, 2018

**VIA EMAIL**

Station Manager

**Re: Advertisement by DAGA WI People's Lawyer Project – “Judgment”**

Dear Station Manager:

We write on behalf of DAGA WI People's Lawyer Project (“**DAGA**”) in response to a letter you received from Attorney General Brad Schimel's counsel. Mr. Schimel takes issue with three claims in the DAGA advertisement — all three based either on actions he took or statements he made as a prosecutor, actions he supervised as District Attorney of Waukesha County, and factual events that are fully supported by public records. Because the claims in question are accurate and fully supported by publicly-available sources, the ad should continue to air. DAGA has already provided the station with the detailed backup support for every statement in the advertisement. This letter responds to the contentions advanced by Mr. Schimel's counsel.

First, Mr. Schimel complains that two of the cases cited on screen to support the claim that Mr. Schimel “*cut plea deals for men who sexually assaulted children*” were “assigned to” Deputy District Attorney Debra L. Blasius. But Mr. Schimel's argument is unpersuasive. Mr. Schimel was *the* elected District Attorney in Waukesha County. Wisconsin law prescribes that the County's District Attorney is *the* official authorized to “*prosecute all criminal actions* before any court within his or her prosecutorial unit.”<sup>1</sup> In fact, the law goes further to assign the County District Attorney “*sole responsibility* for prosecution of all criminal actions arising from violations” of Chapters 5 through 12 of Wisconsin law.<sup>2</sup> The law permits Mr. Schimel to “[h]ire, employ, *and supervise his or her staff*”; such staff may “appear and *assist* in the investigation or prosecution of any matter *for which a district attorney is* responsible under this chapter ...” Put simply, Mr. Schimel was responsible for the prosecutions and plea bargain deals cut by his staff -- those actions were taken in his name as district attorney. For him to now disclaim responsibility is contrary to Wisconsin law and his responsibilities as district attorney.

Moreover, in both instances cited in the letter, Mr. Schimel is listed multiple times throughout the court records and is even identified in each instance as the “prosecuting agency

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<sup>1</sup> Wis. Stat. § 978.05(1) (emphasis added).

<sup>2</sup> *Id.* (emphasis added).

attorney.”<sup>3</sup> In fact, in each case “Schimel appeared for the State of Wisconsin” after Ms. Blasius appeared on behalf of the state.<sup>4</sup> So even in the cases that he now claims were not his, Mr. Schimel was listed as the *prosecuting agency attorney*. He cannot now disclaim responsibility because he is embarrassed by their results.

Next, Mr. Schimel takes issue with the claim that “[h]e *blamed underage victims of sexual assault for their quote ‘bad judgment.’*” Yet, according to publicly available news sources, Mr. Schimel made that exact statement as an assistant district attorney in Waukesha County in 2003, when he prosecuted Dustin Yoss for attacking two 15-year-olds.<sup>5</sup> According to publicly-available news sources:

Yoss was alleged to have held down a girl and pulled down his pants before she escaped. Yoss [also] allegedly badgered a different 15-year-old to have sex with him and offered her \$500 to do so. She repeatedly refused but eventually relented. Afterward, he allegedly badgered her to have sex a second time until she agreed. During that second time, she told him to stop but he wouldn’t stop, according to the criminal complaint.<sup>6</sup>

According to the same news source, after reaching a deal with Yoss “Schimel made no sentencing recommendation, other than to ask that the judge bar Yoss from contacting the victims” and instead told the judge that “[b]oth victims consider their decisions they made that night to be very bad judgment to put themselves in the bedroom alone with Mr. Yoss.”<sup>7</sup> As to the victim who eventually agreed to have sex, Schimel told the judge, “She said no, no, no, no, but then eventually gave in and then let the defendant do it out of fear. **That’s a little tougher call to — or a lot tougher call to make the force allegation, and she knows that.**”<sup>8</sup>

Notably, Mr. Schimel does not deny that he assigned blame to the victim for “very bad judgment”; nor does he deny that he told the court it was a “tough[] call” as to whether a woman who said “no” to multiple times but “then eventually gave in and *then let the defendant do it out of fear*” had been a victim of forcible rape. Mr. Schimel’s biggest complaint appears to be that the ad did not include his complete statement and characterized his words as “blaming the victim.” While Mr. Schimel is free to purchase time on your station to argue that his words did not constitute “blaming the victim,” he should not be allowed to silence those who believe that such words do blame the victim and discourage victims from coming forward. In fact, Joanna Beilman-Dulin told the *Milwaukee Journal Sentinel* that Mr. Schimel’s words were “dismissive of the victims” and “feel[] sort of like victim blaming.”<sup>9</sup> Mr. Schimel may not like the implication of his statements,

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<sup>3</sup> See, e.g., <https://wcca.wicourts.gov/caseDetail.html?caseNo=2007CF000634&countyNo=67&mode=details>; <https://wcca.wicourts.gov/caseDetail.html?caseNo=2006CF000650&countyNo=67&index=0&isAdvanced=true&mode=details>.

<sup>4</sup> See *supra* note 3.

<sup>5</sup> <https://www.jsonline.com/story/news/politics/elections/2018/09/25/brad-schimel-did-not-seek-jail-time-pair-assaulted-younger-teens/1411005002/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> <https://www.jsonline.com/story/news/politics/elections/2018/09/25/brad-schimel-did-not-seek-jail-time-pair-assaulted-younger-teens/1411005002/>

but there is no denying what this statement means: he publicly blamed two fifteen-year-old girls for their “very bad judgment” on the night they were sexually assaulted. The public has a right to know this information when voting for the next Attorney General of Wisconsin.

Finally, Mr. Schimel concludes the letter by challenging the claim that a man caught with child pornography “*got a plea deal...*” However, the defendant at issue undeniably received a “plea deal” — after changing his plea from “not guilty” to “guilty” and after the “State presented their sentencing recommendations” to the judge,<sup>10</sup> the defendant received only three years in jail and an “image surcharge” of only \$500 for possession of child pornography.<sup>11</sup> Under state law, that crime is a Class D Felony and is punishable by up to 25 years in prison, a fine of up to \$100,000 or both.<sup>12</sup> In fact, the absolute minimum jail sentence a judge can impose for possession of child pornography is three years.<sup>13</sup>

Moreover, state law requires judges to impose an “image surcharge of \$500 for each image or copy of an image associated with the crime” of possessing child pornography.<sup>14</sup> According to the criminal complaint, the detective at the defendant’s house “found several thousand files which were indicative of child pornography on the computer.”<sup>15</sup> At a minimum, the defendant should have been fined the maximum \$100,000 based on the number of pornographic photos found on his computer, but he was fined only \$500.<sup>16</sup> The conclusion here is obvious: the prosecutor convinced the defendant to change his plea from “not guilty” to “guilty” in exchange for a recommendation to the judge that he receive a reduced sentence for his crime. This is the definition of a “plea deal.”<sup>17</sup>

As Attorney General of Wisconsin and a candidate for public office, Mr. Schimel is a public figure. He has a guaranteed right of reasonable access to advance and explain his own views, but he has no such right to silence DAGA’s ability to communicate important information to Wisconsin voters about his record as a prosecutor. DAGA’s ability to speak freely on such matters of public importance is at the heart of the First Amendment’s protections.<sup>18</sup> In fact, the FCC has held that stations best meet their public interest obligations “by presenting contrasting views” and encouraging “robust, wide-open debate.”<sup>19</sup> The FCC has consistently rejected invitations by political figures to “judge the truth or falsity of material being broadcast on either side of a currently controversial issue.”<sup>20</sup>

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<sup>10</sup> <https://wcca.wicourts.gov/caseDetail.html?caseNo=2013CF000650&countyNo=67&mode=details#records>.

<sup>11</sup> *Id.*

<sup>12</sup> Wis. Stat. §§ 939.50(2)(d); 948.12(3)(a).

<sup>13</sup> Wis. Stat. § 939.617(1).

<sup>14</sup> *Id.* § 973.042(1), (2) (“If a court imposes a sentence or places a person on probation for a crime under s. 948.12 and the person was at least 18 years of age when the crime was committed, *the court shall impose a child pornography surcharge of \$500 for each image or each copy of an image associated with the crime.*”).

<sup>15</sup> Exhibit A, Lambrecht Criminal Complaint at 2.

<sup>16</sup> <https://wcca.wicourts.gov/caseDetail.html?caseNo=2013CF000650&countyNo=67&mode=details#records>.

<sup>17</sup> [https://www.law.cornell.edu/wex/plea\\_bargain](https://www.law.cornell.edu/wex/plea_bargain) (describing a “plea bargain” by explaining that prosecutors may “also agree to recommend that defendants receive reduced sentences.”).

<sup>18</sup> *Time, Inc. v. Hill*, 385 U.S. 374 (1967); *New York Times v. Sullivan*, 376 U.S. 254 (1964).

<sup>19</sup> *In re Complaint by Hon. Ronald Reagan*, 38 F.C.C.2d 314 (1972).

<sup>20</sup> *Id.*; accord *In re Complaint by Alan S. Burstein*, 43 F.C.C.2d 590 (1973); *In re Complaint by Patton Echols*, 43 F.C.C.2d 479 (1973).

Your decision to accept this advertisement should remain undisturbed so the citizens of Wisconsin can be fully informed of Mr. Schimel's own statements and actions on these critical issues. Please contact us promptly at (414) 273-3939 before this advertisement's schedule on your station changes in any way.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matt O'Neill", written in a cursive style.

MATTHEW W. O'NEILL

cc: Client