Appendix T **July 12, 2021**

Response to Michael Graveley's April 29, 2021 Response to the February 28, 2021 Grievance of Russell Beckman against Kenosha County District Attorney Michael Graveley filed with the Wisconsin Office of Lawyer Regulation.

This Grievance also includes two addendums:
Addendum 1 filed on March 26, 2021.
Addendum 2 filed on April 6, 2021.

The OLR "Grievance Form" is linked here.

This Appendix/Grievance is part of a larger Statement of Facts regarding the case of the 2004 shooting of Michael Bell by Kenosha Police.

On July 12, 2021 this document was submitted in digital form to the Wisconsin Office of Lawyer Regulation.

There will be no edits or revisions to this digital document after the link is emailed to the Office of Lawyer Regulation.

Information regarding the Grievant:
Russell Beckman
1673 River Bend Terrace, #1,
Green Bay, WI 54311
262.945.1249
rbeckman62@yahoo.com

The link to this digital (google) document is:
https://docs.google.com/document/d/1B-AIa7N6f6ji3ZHycdtKpRuP0sA8voEk8lo45xOncPQ/edit?usp=sharing

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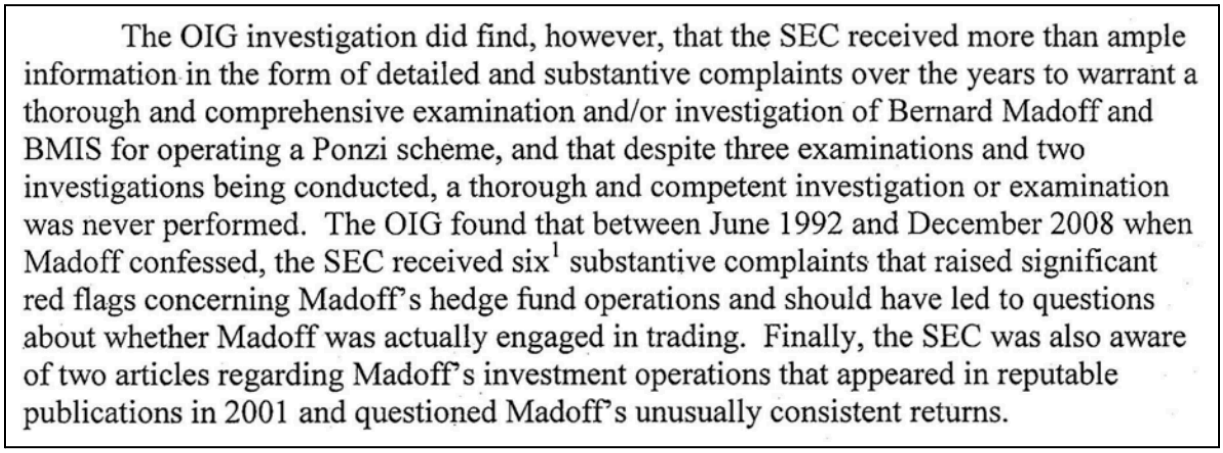
Author's Foreword

I am a lifelong student of history. I find the fascinating story of Bernard Madoff and the failure of the Securities and Exchange Commission to "discover" his massive ponzi scheme to be relevant and similar to the situation with the Bell case. It is also relevant to the many other documented cases in Kenosha where law enforcement engaged in corruption and bad acts, coupled with government regulators' failures to act.

This is a screenshot of the second paragraph of a 2009 Executive Summary[1] (Exhibit 217) of the bureaucratic post-mortem of the SEC Inspector General into the SEC's failure to act and perform their mission to protect investors.

Screenshot of the second paragraph of page 1, Exhibit 217.[2]



The OIG investigation did find, however, that the SEC received more than ample information in the form of detailed and substantive complaints over the years to warrant a thorough and comprehensive examination and/or investigation of Bernard Madoff and BMIS for operating a Ponzi scheme, and that despite three examinations and two investigations being conducted, a thorough and competent investigation or examination was never performed. The OIG found that between June 1992 and December 2008 when Madoff confessed, the SEC received six[1] substantive complaints that raised significant red flags concerning Madoff's hedge fund operations and should have led to questions about whether Madoff was actually engaged in trading. Finally, the SEC was also aware of two articles regarding Madoff's investment operations that appeared in reputable publications in 2001 and questioned Madoff's unusually consistent returns.

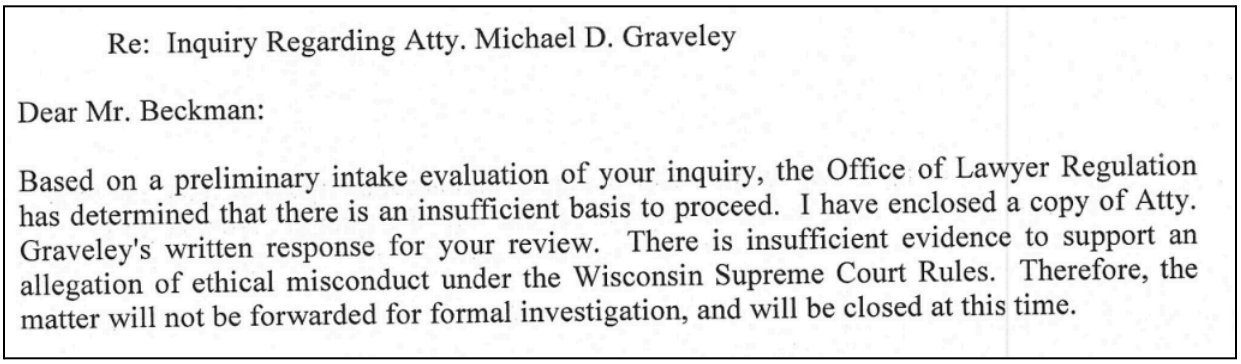
I fear history is repeating itself. . .

Admittedly, I was stunned when I read the May 7, 2021 notice (Exhibit 195) from the Office of Lawyer Regulation dismissing the Grievance that I filed against Kenosha County District Attorney Michael Graveley.

[1] A complete read of the Executive Summary (Exhibit 217) will make your head spin. It should be required reading for all government employees who work in regulatory positions. It describes an absolute perfect storm of multiple governmental failures that allowed Madoff's ponzi scheme to exist, and actually grow, in a "highly regulated" environment.

[2] United States Securities and Exchange Commission, Office of Inspector General. (2009) *Report on investigation: Investigation of failure of SEC to uncover Benard Madoff's ponzi scheme. Executive Summary.* Retrieved on May 23, 2021 from the following web site: https://www.sec.gov/files/oig-509-exec-summary.pdf

This is a screenshot of the first paragraph of that notice. (Exhibit 195. Page 1)



Re: Inquiry Regarding Atty. Michael D. Graveley

Dear Mr. Beckman:

Based on a preliminary intake evaluation of your inquiry, the Office of Lawyer Regulation has determined that there is an insufficient basis to proceed. I have enclosed a copy of Atty. Graveley's written response for your review. There is insufficient evidence to support an allegation of ethical misconduct under the Wisconsin Supreme Court Rules. Therefore, the matter will not be forwarded for formal investigation, and will be closed at this time.

This paragraph leaves me with many questions and few answers.

"Insufficient basis to proceed?" "Insufficient evidence to support an allegation of ethical misconduct?" "Inquiry?" (I did not call the OLR and ask a question. I filed a detailed grievance with dozens of supporting documents.) "How much evidence would be sufficient?" "As with the Madoff case, did the OLR simply accept Graveley's explanations, regardless how implausible they were?" "Did the OLR engage in **any** investigative actions, at all? Like maybe calling the DNA analyst Graveley identified in his response to ask her if she really confirmed Graveley's prior training and assumptions regarding his dubious position on touch DNA?[3]" There are so many more questions.

There is one answer that is clear. Yes, it really is like Madoff 2.0, as far as the OLR is concerned.

I often refer to the Bell team. We are a group of citizens who are pressing for justice for the Bell family and many other citizens who have been harmed by the toxic culture of dishonesty in Kenosha law enforcement. This culture is built on the foundation that law enforcement officials in Kenosha will not be held accountable for their bad acts.

On November 20, 2012, I wrote these two paragraphs in an affidavit in which I describe my well-documented theory about the 2004 shooting of Michael Bell. I theorized that Officer Strausbaugh attributed his handgun getting accidentally caught on a car mirror to Michael Bell attempting to disarm him. I allege that from the time of the shooting to today, the true circumstances surrounding the death of Michael was concealed by the officers on the scene and higher ranking law enforcement officials. (Exhibit 3)

Screenshot of part of Exhibit 3, page 18.

[3] Please read my response to Graveley's paragraph 7, pages 32-42 of this response, for additional details.

The Powerful Influence of Peer Pressure in Law Enforcement Culture:

69) As indicated, the Affiant believes if his theory regarding the capture of Officer Strausbaugh's handgun by the driver's-side mirror during the encounter with Michael Bell is correct, a relatively small group of Kenosha Police Department personnel, and possibly City of Kenosha officials, are aware of it. These individuals have participated, and are still participating in, the conspiracy to conceal the actual circumstances of the Bell homicide from legally required disclosure.

70) People outside of law enforcement may wonder how such a conspiracy of silence and deception could be initiated and maintained. Based on the Affiant's lifetime of experience in the profession, the Affiant believes that such concealment is both possible and even predictable, due to the culture of dishonesty that he believes exists at the Kenosha Police Department. (The Affiant has extensively documented this pattern and practice of deception on the part of police officials in a separate affidavit that is also included in this filing.)

It turns out my words were prophetic. Since I wrote these paragraphs in 2012, there have been many instances with Kenosha law enforcement in which my proposed "culture of dishonesty" has been on display.[4]

I believe that Graveley's deceptive and fraudulent September 27, 2017 letter (Exhibit 49), which is at the center of my Grievance, is a manifestation of this "culture of dishonesty." Further, in this detailed response, I believe I will show, often with Graveley's own words, that Graveley continues with this dishonesty.

Why and how can a cancer such as this continue to grow in modern American society and in our own State?

It grows because our society allows the government entities who should treat, minimize, and eliminate this cancer to instead, choose the path of denial.

Yes, I fear that in the future, there will be a similar official post-mortem of the governmental failures in the Bell case and the many other well-documented cases in Kenosha where law enforcement engaged in corruption. Until that day comes, myself and others will continue to push regulators to actually take this problem seriously.

[4] For a detailed listing and summary of most, but not all, of these instances of ethical and criminal misconduct involving Kenosha Law Enforcement, see Appendix O.

Some readers of this response may develop negative assumptions about my motives in the drafting of this response. These assumptions may develop due to the extreme detail that I include in responding to every one of the 21 paragraphs in DA Graveley's April 29, 2021 response (Exhibit 195) he provided to the Office of Lawyer Regulation due to the February 28, 2021 Grievance (Appendix Q) and subsequent two addendums I filed on March 6, 2021 (Appendix R) and April 6, 2021 (Appendix S), respectively.

Please know that I offer no apologies for this extreme detail. It is not due to any personal animosity towards Graveley. It is necessary to overcome the presumption that a sitting District Attorney would not engage in ethical misconduct and the societal reluctance to act on such misconduct. This is also a complex matter which requires detailed examination of the evidence. There is much at stake. It requires extreme scrutiny of the evidence offered by both myself and Graveley. In addition to providing evidence for the immediate tasks of the Office of Lawyer Regulation, this response is also intended to establish a comprehensive record for the future.

Introduction

This document is the Grievant's (Russell Beckman--this will be written in the first person.) response to Michael Graveley's April 29, 2021 response (Exhibit 195, pages 2-10) to the Grievance that I filed on February 28, 2021 (Appendix Q) and two subsequent Addendum 1 (Appendix R), filed on March 26, 2021 and Appendix 2 (Appendix S) filed on April 6, 2021.

The format of this response will be as follows:

There are twenty-two paragraphs in Graveley's April 29, 2021 response. (Exhibit 195, pages 2-10) Screenshots of each paragraph have been copied and pasted into this document. I will address and respond to each of these paragraphs individually and sequentially.

After the paragraphs are addressed, I will present a general conclusion.

I will then provide a section providing information that staff at the Office of Lawyer Regulation may not have appropriately considered the contents of Addendum 2 (Appendix S) in their May 7, 2021 decision (Exhibit 195, pages 1-2) to deny my grievance, which they refer to as a simple "inquiry."

Next, I will present newly obtained information from two public records requests (Exhibits 202 and 203) related to this Grievance.

I will then present an argument that the newly obtained information from these two public records requests, along with the previously mentioned suspected non-consideration of the information in Addendum 2 (Appendix S) by the OLR, should require the OLR to consider all of these submissions as a "new grievance." Thus, the OLR should deem their evaluation of this response and all of the other associated documents that have been submitted from the onset of this grievance as the first step in their established grievance process.

Responses to individual paragraphs

Paragraph 1; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 3:
Link to cited attachment 1. (see pages 1- 4 of this linked document, Exhibit 199.)[5]
Link to cited attachment 2. (see pages 5 - 49 of this linked document, Exhibit 199.)

> This letter is in response to the grievance filed by Russell Beckman as it relates to the letter I wrote to Michael Bell (Mr. Bell) on September 27, 2017 (see attachment 1). This is the second OLR grievance filed against me relating to the officer involved death of Mr. Bell's son (also named Michael Bell). Approximately three years ago, in the Spring of 2018, Mr. Bell filed a grievance against me alleging that I had made false statements to the Kenosha News regarding the officer involved death of his son (see attachment 2 for the first grievance and my response). That grievance was legally and factually baseless. Now again, a similar grievance has been filed, this time by Russell Beckman who appears to be working at some level of coordination with Mr. Bell. Once again, the grievance alleges that I made false statements. In particular, this grievance alleges that I violated Wisconsin Supreme Court Rule 20:8.4(c) which states, "It is professional misconduct for a lawyer to:...engage in conduct involving dishonesty, fraud, deceit or misrepresentation." This grievance is baseless.

Points addressed in this section:

- Russell Beckman and Michael Bell are collaborating in their work.
- This collaboration has not been concealed.
- The collaboration of Russell Beckman, Michael Bell, and others is legal and constitutionally protected.
- The 2018 Grievance Michael Bell filed against Michael Graveley was not "baseless."
    - Further, it has no relevance, what-so-ever, to the February 28, 2021 Grievance and two addendums Beckman filed against Graveley.

Beckman full response:

First, I will address Graveley's statement that it appears that I am working at some level of coordination with Mr. Bell. Graveley also makes this assertion towards the end of his response in paragraph 20. Graveley issues this charge as if there is something negative, insidious, or conspiratorial about the possibility of Mr. Bell and I working together.

[5] Attachment 1 is also the full September 27, 2017 letter Graveley sent to Bell which is the subject of this grievance. (Exhibit 49)

It should be known to all that I am, in fact, working with Mr. Bell. Also, it is not a secret nor is it insidious, as Graveley alludes. It is well known in the Kenosha community that I have been working with Bell for many years. There have been no attempts to conceal this. I have appeared with Mr. Bell in numerous video newscasts and short documentary films about his son's case. Several other film projects are being considered by documentary production companies. If those projects undergo production, I will continue to collaborate with Mr. Bell and these producers.

It has also been publicized in many media stories that I have been working with Mr. Bell on both previously passed and currently pending legislation in Wisconsin to reform law enforcement practices related to law enforcement fatalities.

It is an obvious inference that the source of the many private documents that I cited in my Grievance and the two Addendums had to be provided to me by Mr. Bell and that I was using these documents with his cooperation and permission.

I have also made no attempt to conceal the fact of my collaboration with Mr. Bell from the OLR staff. In fact, I wrote the following in Footnote #1 of my initial February 28, 2021 grievance to the OLR: *"Did Graveley really believe his misleading statements regarding touch DNA would go unchallenged? As someone who has investigated the Bell case as a private citizen for more than a decade, I am the person who is best positioned to engage in the challenge."* (Appendix Q, page 2)

I also made my collaboration with Mr. Bell clear in an April 12, 2021 email I sent to OLR Investigator Jonathon Zeisser. (Exhibit 197, Pages 3-4) In this email, which I sent to Mr. Zeisser the day after we spoke by phone, I wrote the following sentences in the three paragraphs on the bottom of page 3 and the top of page 4:

> *"I am not a private investigator, although I have professional lifetime of experience as a police detective. Mr. Bell does not pay me for my work and consultation on his case. I am strictly a volunteer who is motivated by my desire for the Bell family to secure justice in what I am convinced is an ongoing concealment of the true circumstances surrounding the death of their son."*

I also wrote, in that same email, *". . . [I am] part of a dedicated team of citizens who assist Mr. Bell with his work. . ."*

Yes, It is true, I am part of a dedicated group of people who work as a team to secure legal reforms and to secure justice for the Bell family. Since this effort started, two

members of our team have died, but others have joined. Mr. Bell has also had to hire attorneys and forensic experts in various fields to pursue our work.

Why would Graveley consider this a problem? One can speculate that our work threatens him professionally. But I will not attempt to read his mind.

Our work is protected by both the Wisconsin and United States Constitutions. In fact, it is almost like Article 1, Section 4 of the Wisconsin Constitution was written specifically to justify the activities of our team. It states:[6]

"Right to assemble and petition. SECTION 4.
The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged."

I submit that Graveley's contention that my collaboration with Mr. Bell negates my OLR Grievance is simply invalid and legally inappropriate. I urge the OLR to provide his contention with no consideration or weight.

I will now address the 2018 Grievance that Mr. Bell filed against Graveley with the OLR. Graveley states that my February 28, 2021 Grievance is "baseless" because the OLR did not act on the 2018 Bell grievance.[7]

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[6] Directly copied from the following web page of May 16, 2021:
https://docs.legis.wisconsin.gov/constitution/wi_unannotated

[7] I struggle with my decision to provide the information in this footnote. I decided to put this information in a footnote because it may not be relevant since I declare that the existence of Bell's 2018 grievance is not relevant to the OLR decision on my current February 28, 2021 grievance.

Although I was aware in the past that Mr. Bell had filed a grievance against Graveley in 2018, it had no bearing on my decision to file my recent grievance. At the time that Bell filed his 2018 grievance, my involvement in his work was somewhat limited. During that time, I suffered a serious injury that ultimately required surgery with a long period of recovery. At that time, nearly all of my intellectual resources were consumed by the pursuit of my Master's degree, into which I also invested quite a bit of money. Because of this, other than verbal conversations with Bell and other team members, I did not participate in the drafting or submission of the 2018 Bell grievance. In fact, I actually had very limited knowledge of it.

This statement is verified by what I wrote in the April 12, 2021 email I sent to OLR Investigator Jonathon Zeisser. (Exhibit 197, Pages 3-4) Although I mention the John Doe Petition and an OLR grievance that Bell filed against two private attorneys, I do not mention the 2018 OLR grievance Bell filed against Graveley. That omission occurred, not due to calculation, but rather, because I forgot about it. (I also had very limited input into and did not participate in the drafting of the John Doe Petition and the grievances against the two private attorneys.)

I wrote this in Exhibit 197, Page 4: *"Because my work on the Bell case is as a volunteer, I need to fit it into my free time. Since Graveley published the September 27, 2017 letter, I finished my Masters, which required the successful completion of an extensive thesis. Plus, my life included an injury that required*

That is a ridiculous argument. Graveley should know that it is ridiculous. How many people does Graveley's office prosecute for offenses despite the fact that these people have had previous charges that have not resulted in convictions? Dozens? Hundreds? Thousands? It happens all the time.

I am not taking a political position by mentioning this, however, I will do so anyway. President Trump was impeached a second time by the House, despite the fact that he was impeached one time prior by that same body. Trump was impeached the second time due to different conduct that a majority of the Representatives believed justified impeachment.

My Grievance involves different conduct from Bell's 2018 grievance. Graveley, in his response, does not argue that I am grieving the same alleged improper conduct. He does say that my grievance is similar. That is true. Like with the Bell grievance I am alleging serious misconduct on the part of Graveley. The misconduct I allege must be handled and judged separately.

The idea that if you have one OLR grievance against you dismissed, then you can never be subjected to another grievance is contrary to the rule of law and the pursuit of good and effective administration of justice.

Graveley's argument may be applicable to a King. However, our nation rejected a monarchical form of government at its founding. Thus, the OLR should provide his argument with no consideration or weight. The OLR has no duty to be bound by the declaration of a King that a grievance is baseless.

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surgery, from which I have yet to fully recover. There are also the normal and constant demands of life that all of us face."

I continue in the next paragraph: *"After Graveley wrote his September 27, 2021 letter, Bell filed a John Doe Petition. He also filed a Grievance with the OLR against two attorneys who represented the city of Kenosha in the federal civil suit he filed over this case. Both of these were rejected. My point is that the extensive work we do as private citizens in investigating a law enforcement homicide is very time consuming. We do not have the resources of the government, who should be conducting this investigation, as opposed to obstructing our work at every turn".*

Paragraph 2; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 3:
Link to cited attachment 3. (see pages 50 - 77 of this linked document, Exhibit 199.)
Link to the full September 27, 2017 letter cited in this paragraph.[8] (Exhibit 49)

> Before I get into the more particular responses to this grievance, I will explain the context of the September 27, 2017 letter. After I became Kenosha's District Attorney in January of 2017, Mr. Bell reached out to me asking me to review additional materials and calling for a John Doe investigation to potentially overturn a previous District Attorney's decision not to file criminal charges in the officer involved death of his son in 2004. Following the decision of the DA at the time, this case was closed by the Kenosha County District Attorney's Office. After this passage of time, I was under no obligation to meet with Mr. Bell, but I did so and I reviewed the materials he gave me at his specific request. The September 27, 2017 letter represents my professional opinion as sought by Mr. Bell.[1] Mr. Bell would have been in possession of this letter in the Spring of 2018 when he submitted the initial OLR grievance; yet, almost 3 ½ years since the letter's original receipt, it is now the subject of this new grievance.
>
> [1] Mr. Bell himself subsequently petitioned for a John Doe proceeding. That Petition was denied by Racine County Judge Timothy Boyle (see attachment 3).

Points addressed in this section:

- Beckman addresses the many reasons why it took 3 ½ years after the September 27, 2017 letter was published and disseminated for this gevience to be filed.
- Beckman provides information regarding Graveley's action of entering the September 27, 2017 letter into the record of a John Doe Proceeding. This allowed the misrepresentations in that letter to be considered by the Judge.
    - Beckman alleges that the OLR may be ignoring this allegation and did not ask Graveley to respond to it.

Beckman Response:

Graveley does not argue that my current grievance falls outside the statute of limitations. It is clear it does not. Graveley's mentioning of the 3 ½ years that passed between his issuance of his September 17, 2017 letter (Exhibit 49) and my February 28, 2021 grievance indicates that he believes this diminishes the validity of the grievance. During my April 11, 2021 telephone conversation with OLR Investigator Zeisser, Zeisser asked me about the delay. One of the reasons I sent the April 12, 2021 email to Mr.

[8] Mr. Bell's address was redacted from this letter to protect his privacy.

Zeisser was to provide additional written information to supplement my verbal answer as to why there was a delay. (Exhibit 197 Pages 3 - 4)

Below is a screenshot of the relevant part of this email. (Exhibit 197 Pages 3 - 4) It should be noted that much of the text was already presented in footnote #3 of this document. A smaller amount of text from this screenshot was also provided body of the response to paragraph #1. I believe it is important to provide the full details to address this matter of concern, since both Graveley and investigator Zeisser both brought it up. However, to be clear, it is my position that this concern should be given no weight nor consideration by the OLR in their evaluation of my grievance.

Several of my concerns about the John Doe proceeding Graveley mentions in footnote #1 will be addressed later in this response.

Screenshot of Exhibit 197 pages 3 - 4:

Finally, I want to address, in greater detail, the lag in filing this complaint with the OLR.

I should be known that am a full-time teacher who holds a demanding position for a large Wisconsin urban school district. I became an educator as a second career after I retired from law enforcement. I am not a private investigator, although I have professional lifetime of experience as a police detective. Mr. Bell does not pay me for my work and consultation on his case. I am strictly a volunteer who is motivated by my desire for the Bell family to secure justice in what I am convinced is an ongoing concealment of the true circumstances surrounding the death of their son.

0/2021 Yahoo Mail - Follow-up on our conversation of April 12, 2021. Re; Graveley Grievance

Because my work on the Bell case is as a volunteer, I need to fit it in to my free time. Since Graveley published the September 27, 2017 letter, I finished my Masters, which required the successful completion of an extensive thesis. Plus, my life included an injury that required surgery, from which I have yet to fully recover. There are also the normal and constant demands of life that all of us face.

As part of a dedicated team of citizens who assist Mr. Bell with his work, I can tell you there is much to do involving this case. After Graveley wrote his September 27, 2021 letter, Bell filed a John Doe Petition. He also filed a Grievance with the ORL against two attorneys who represented the city of Kenosha in the federal civil suit he filed over this case. Both of these were rejected. My point is that the extensive work we do as private citizens in investigating a law enforcement homicide is very time consuming. We do not have the resources of the government, who should be conducting this investigation, as opposed to obstructing our work at every turn.

Yes, in a perfect world, maybe this Grievance should have been filed sooner. However, also in a perfect world, it would not have been necessary to file it and the governmental officials who have the power and authority to act judiciously and in the public interest would do so.

It is important for me to respond to Graveley's footnote #1.

Yes, Mr. Bell filed a John Doe Petition with the Kenosha County Circuit Court in late 2018. The petition was assigned to Racine County Circuit Court Judge Timothy Boyle. In this petition, Mr. Bell asked that the Judge appoint a special prosecutor. Mr. Bell also specifically asked that Graveley recuse himself. Neither of these things occurred. Graveley provided his response to the petition as required by Judge Boyle. This response included the September 27, 2017 letter (Exhibit 49) that I contend in my OLR grievance to be dishonest, fraudulent, deceitful and a misrepresentation of the facts. I address, in great detail, Graveley's submission of the September 17, 2017 letter (Exhibit 49) to Judge Boyle, and the possible impact it had on Boyle's decision in Addendum #2 (Appendix S) of my OLR grievance.

Strangely, footnote #1 is only part of Graveley's April 29, 2021 response (Exhibit 195) to my grievance in which he even mentions the John Doe Petition. I am concerned about this. I would be surprised if Graveley ignored a request from the OLR to address issues regarding his submission of the September 17, 2017 letter (Exhibit 49) into the record of the John Doe Petition. Rather, I suspect that the OLR failed to ask Graveley anything about his actions related to placing the September 17, 2017 letter (Exhibit 49) into the Doe record.[9]

I will address specific details of my concerns and suspicions that the OLR ignored this part of my grievance in a section of this response that will appear towards the end. The title of this section is: *"New information--Possible non-consideration of Addendum 2 (Appendix S) by OLR staff"* It starts on page 84 of this response.

[9] On May 11, 2021, I requested, via email, copies of all written materials that OLR Investigator Jonathan Zeisser provided to Graveley when Zeisser requested a response from Graveley. This included the specific questions to which Zeisser asked Graveley to respond. This request was denied. (Exhibit 201)

Paragraph 3; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 4:
Link to cited attachment 4. (see pages 78 - 80 of this linked document, Exhibit 199.)
Link to cited attachment 5. (see pages 81 - 83 of this linked document, Exhibit 199.)
Link to cited attachment 6. (see pages 84 - 94 of this linked document, Exhibit 199.)
Link to the full September 27, 2017 letter cited in this paragraph.[10] (Exhibit 49)

> Mr. Bell is entitled to disagree with my professional opinion as expressed in the September 2017 letter, but he is not entitled to attempt to intimidate a public official in an effort to reach his desired result. In response to his 2018 grievance I wrote, "it is inappropriate for anyone to attempt to weaponized the Office of Lawyer Regulation in order to pressure a public official as Mr. Bell has done here." That was true in 2018 and it is true now. If the Office of Lawyer Regulation has any doubt as to Mr. Bell's intentions, be aware that Mr. Bell has publicized this grievance. Not only has he publicized it on Facebook (see attachment 4), but he has also sent emails about it (presumably, based on the content, to people in addition to myself) (see attachment 5). In fact, Mr. Bell, through this email, was my first source of knowledge that this grievance even existed. Mr. Bell has spoken to and shared information about this grievance with news outlets (see attachment 6). Mr. Bell has publicized this grievance even though the Office of Lawyer Regulation Grievance Form (including the one submitted by Mr. Beckman) specifically says, "The Wisconsin Supreme Court requires that this agency conduct all grievance investigations in confidence." If Mr. Bell and Mr. Beckman were motivated by a genuine concern that I had violated my ethical obligations, then this grievance could have been submitted "in confidence" and they could have awaited the findings of the OLR investigation. The fact that Mr. Bell has publicized this grievance shows his true motivation which is to misuse the Officer of Lawyer Regulation and the valuable function it serves in an attempt to compel me, a public official, to make decisions not based on my professional opinion but based on fear of intimidation and public defamation.

Points addressed in this section:

- Graveley accuses Mr. Bell of attempting to intimidate him by "weaponizing" the Office of Lawyer Regulation to pressure him in his official duties by Bell's filing of an OLR Grievance in 2018.
- Graveley also complains that Bell is publicizing both the 2018 and the current 2021 Grievance that was filed by Beckman.
    - Beckman counters that Bell's 2018 Grievance has no relevance to the 2021 Grievance and that Graveley is an elected District Attorney who is not immune from criticism nor complaints to regulatory agencies.

Beckman Response:

I will first address Graveley's apparent fixation on Mr. Bell and Bell's 2018 OLR grievance. I will then address what I believe is Graveley's bizarre assertion of

[10] Mr. Bell's address was redacted from this letter to protect his privacy.

intimidation and Bell's alleged attempt--and by proxy, also my attempt--to ". . .weaponize the Office of Lawyer Regulation. . ."

In this paragraph Graveley specifically mentions Mr. Bell's name ten times. He specifically mentions my name twice.

That is notable and remarkable. To be clear, Graveley's response should address my February 28, 2021 grievance and two addendums, not Mr. Bell's 2018 grievance.

As I extensively discussed in my responses to paragraphs one and two, whatever happened or did not happen with Mr. Bell's 2018 grievance has no relevance to my February 28. 2021 grievance. Thus, as before, I urge the OLR to provide no consideration nor weight to Graveley's contention that what happened in 2018 with Mr. Bell's grievance has any relevance to my grievance. I will not repeat here the information I previously provided in my responses to paragraphs one, two, and in footnote #3. However, that information is incorporated into my response to this paragraph.

I must state that I am not responsible for Mr. Bell's actions, be it as it relates to his actions related to his filing of 2018 grievance, to my filing of the February 28, 2021 grievance and addendums, nor any other actions Mr. Bell has or has not taken at any time in his life. Thus, whatever Mr. Bell did or did not do regarding Graveley and the OLR grievances filed against him are not relevant to the manner in which the OLR should handle my grievance. It is my position that Graveley's concerns about Mr. Bell should be given no weight or consideration by the OLR in their evaluation of my grievance.

However, I believe I should provide additional information to support my position.

I know Mr. Bell very well. Despite that, I do not know and I can only imagine what frustration, anger, and pain he experiences constantly as the father of a young man who was killed in a questionable police shooting. Fortunately, very few readers of this response, if any, will ever experience that pain

You can add to that frustration the manner in which government officials on all levels, including Graveley, have refused to deal with and properly investigate the true

circumstances of his son's death.[11] Despite all this, I personally admire Mr. Bell's determination and the manner in which he has handled this injustice.

Graveley is a powerful elected public official. He is the most powerful law enforcement official in Kenosha County. He has the power to initiate actions to take the liberty and property of private citizens, and to deem justifiable, the taking of a citizen's life.

When a respected citizen like Mr. Bell, and others, question Mr. Graveley's ethics, through the established process to do so, Graveley should have no expectation that he be treated gently. I spent a professional lifetime watching prosecutors from Graveley's office aggressively prosecute the citizens they charged with crimes. Why should Mr. Bell cut Graveley any slack? I doubt that I would if I were in Mr. Bell's position. I doubt many people would.

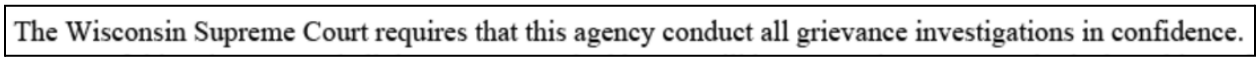
It should be noted that Graveley makes no allegations that Mr. Bell has violated any laws in the manner in which Bell has handled his son's death. (No, making public officials nervous or uncomfortable by publicizing facts is a constitutionally protected activity.)

Could it be that Graveley is "intimidated" by the system of due process that the OLR has in place to deal with complaints of citizens against the alleged unethical actions of attorneys? Is Graveley "intimidated" because he knows he is on the wrong side and defending the indefensible?

Neither Mr. Bell, myself, nor any other citizen should be deemed by a publicly elected district attorney, nor any attorney employed by the public, to be "weaponizing" the OLR by making a complaint against that attorney. Graveley's dramatic rhetoric about Bell's actions is more indicative of a tyrant than a duly elected public official. To be clear, Graveley, like all other elected officials, are not above criticism and questioning of their official actions.

Graveley is correct that the OLR has the follow language on its grievance form:

Screenshot of part of Exhibit 169, page 2:


The Wisconsin Supreme Court requires that this agency conduct all grievance investigations in confidence.

[11] It is beyond the scope of this response to provide full details on the work and progress our team has made in uncovering the true circumstances of the death of Michael Bell. In addition to what we have already uncovered, we are on the verge of what we believe will be even more significant findings. We believe these new findings, in concert with the other evidence we have uncovered, will show the official police account of the Bell shooting was fabricated. From Mr. Bell's perspective, which myself and many others share, Graveley is serving as the most significant barrier to a determination of the truth.,

However, most informed citizens do not believe there is any legal requirement for a private citizen to refrain from disclosing information about a grievance that is filed against a publicly employed attorney. I suggest that if there is, Graveley arrange to have Mr. Bell criminally charged or be the subject of a civil action.

If my memory serves me correctly[12], when Mr. Bell filed grievances against the two private attorneys after 2018, as I described on page 4 of Exhibit 197 (see screenshot on page 14 of this response.), Bell did not perform the same actions to publicize the grievances as he did with the grievances against Graveley. The reason for this restraint was due to the fact that these were private attorneys, not publicly elected attorneys.

Graveley holds a unique position that does not allow him to enjoy that same level of confidentiality.

Paragraph 4; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 4:
Link to the full September 27, 2017 letter from which this paragraph was included.[13]
(Exhibit 49)

I will now turn to the specific allegations that Mr. Beckman asserts are a violation of SCR 20:8.4(c). It appears that one paragraph of my three page letter is at issue. That paragraph reads:

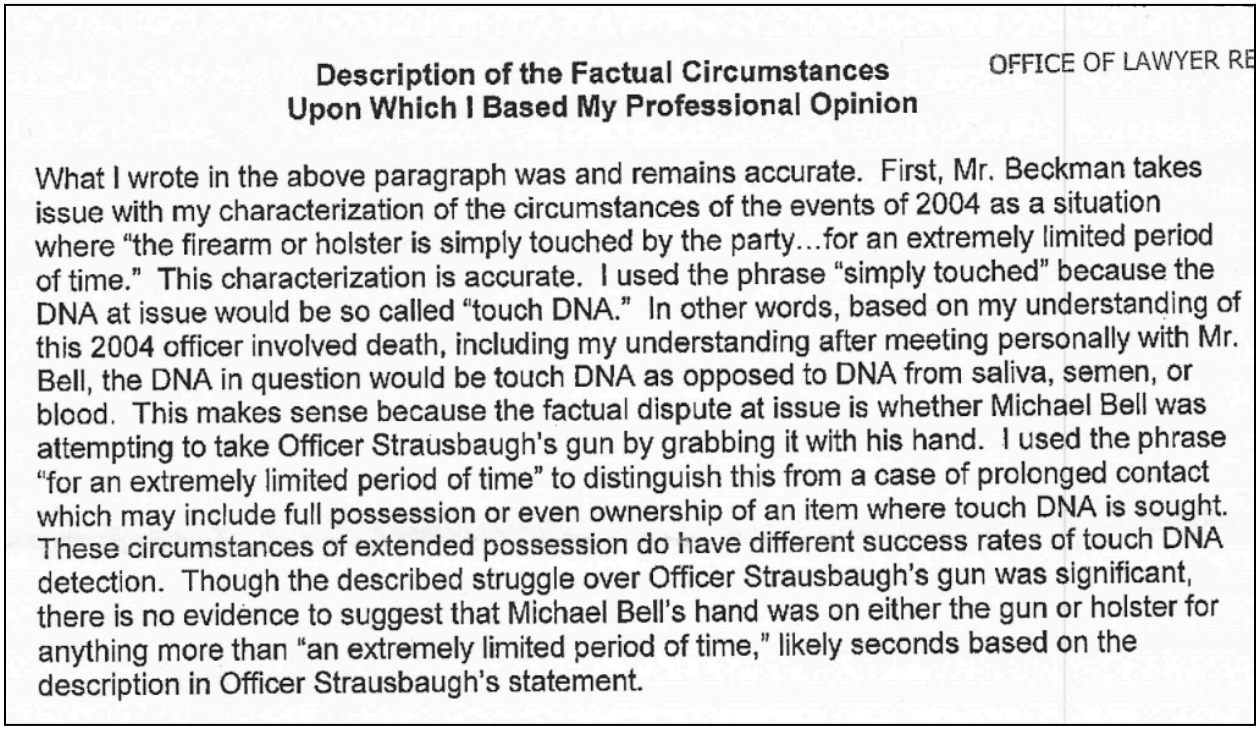
> Let me first address the assertion by Russell Beckman that the absence of DNA from Michael Bell on Officer Strausbaugh's gun or holster would lead to any strong conclusion supportive of officers being disingenuous or mistaken in their reports contemporaneous with your son's death. I have been the primary firearms prosecutor in Kenosha County for over a decade. During that period of time, I have handled hundreds of criminal cases regarding the possession and use of firearms and have reached conclusions regarding the presence and absence of DNA in several dozen cases. It is both my training and experience that in circumstances where the firearm or holster is simply touched by the party, and for an extremely limited period of time, you would almost never receive a positive test result for the presence of that individual's DNA. In other words, I would not expect Michael Bell's DNA on the gun or holster based on the factual circumstances of this case. This is consistent with literature on Touch DNA. Prior to drafting this letter, I again called the DNA analysts at the State Crime Lab to confirm my prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death. I believe that Russell Beckman's extremely strong assertions in this case have done you a disservice as they are contrary to the underlying science of DNA evidence.

Beckman Response:
No response to this paragraph is offered.

[12] I reserve the right to confirm this information, should a question develop about its accuracy. As indicated, during that time, I was somewhat detached from the Bell team.

[13] Mr. Bell's address was redacted from this letter to protect his privacy.

Paragraph 5; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 5
Link to cited attachment 7. (see pages 95 - 99 of this linked document, Exhibit 199.)
(Attachment 7 is Officer Strausbaugh's written statement that was taken within hours of his encounter with Michael Bell in which Bell was killed.)
Link to the full September 27, 2017 letter cited in this paragraph.[14] (Exhibit 49)



Description of the Factual Circumstances Upon Which I Based My Professional Opinion

OFFICE OF LAWYER RE

What I wrote in the above paragraph was and remains accurate. First, Mr. Beckman takes issue with my characterization of the circumstances of the events of 2004 as a situation where "the firearm or holster is simply touched by the party...for an extremely limited period of time." This characterization is accurate. I used the phrase "simply touched" because the DNA at issue would be so called "touch DNA." In other words, based on my understanding of this 2004 officer involved death, including my understanding after meeting personally with Mr. Bell, the DNA in question would be touch DNA as opposed to DNA from saliva, semen, or blood. This makes sense because the factual dispute at issue is whether Michael Bell was attempting to take Officer Strausbaugh's gun by grabbing it with his hand. I used the phrase "for an extremely limited period of time" to distinguish this from a case of prolonged contact which may include full possession or even ownership of an item where touch DNA is sought. These circumstances of extended possession do have different success rates of touch DNA detection. Though the described struggle over Officer Strausbaugh's gun was significant, there is no evidence to suggest that Michael Bell's hand was on either the gun or holster for anything more than "an extremely limited period of time," likely seconds based on the description in Officer Strausbaugh's statement.

Points addressed in this section:

- Graveley states his statements in the September 27, 2021 letter were accurate and truthful. However he provides no evidence to support his position, other than to say it is so.
    - To refute Graveley's unsupported statements, Beckman provides very detailed information, including multiple screenshots of written statements of the officers who were directly involved in the deadly encounter and from former District Attorney Robert Jambois' findings of fact and conclusions.

Beckman Response:

There is much to unpack here.

[14] Mr. Bell's address was redacted from this letter to protect his privacy.

Graveley's proclaims that the paragraph he wrote in the September 27, 2017 letter (Exhibit 49) (See Graveley's paragraph #4 on page 19 of this response.) which is the subject of this grievance "was and is accurate." **It is not. No matter how much Graveley states otherwise, his paragraph is dishonest, fraudulent, deceitful and a misrepresentation of the facts contrary to Wisconsin SCR 20:8.04(c).**

I do not expect anyone to simply accept my accusation because I say it is so. I will show it to be so by evidence, including Graveley's own words.

At the core of Graveley's deception is his misrepresentation of the officer accounts of the struggle between Michael Bell and the officers over Officer Strausbaugh's holstered handgun.

In this paragraph, Graveley writes:

*". . .where a firearm or holster was simply touched [Strausbaugh's gun and holster] for an extremely limited period of time, you would **almost never** receive a positive test result for that individual's DNA."* (bolding added)

This is a full, blatant, and "in your face" mischaracterization of how all the officers, including Officer Strausbaugh, who on the scene when Bell was shot to death describe the events that lead to Bell being shot in the head by one the officers.[15]

I commend Graveley for including Officer Strausbaugh's written statement of November 9, 2004 as Attachment 7 (pages 95 - 99 of Exhibit 199) of his April 29, 2021 response (Exhibit 195) to this Grievance. It is certainly not in Graveley's interest to have anyone who is evaluating this Grievance to actually read Officer Strausbaugh's statement. It is imperative that this statement actually be read. (For convenience Strausbaugh's statement can be accessed as Exhibit 44. This statement was included in the February 28, 2021 Grievance I filed.)

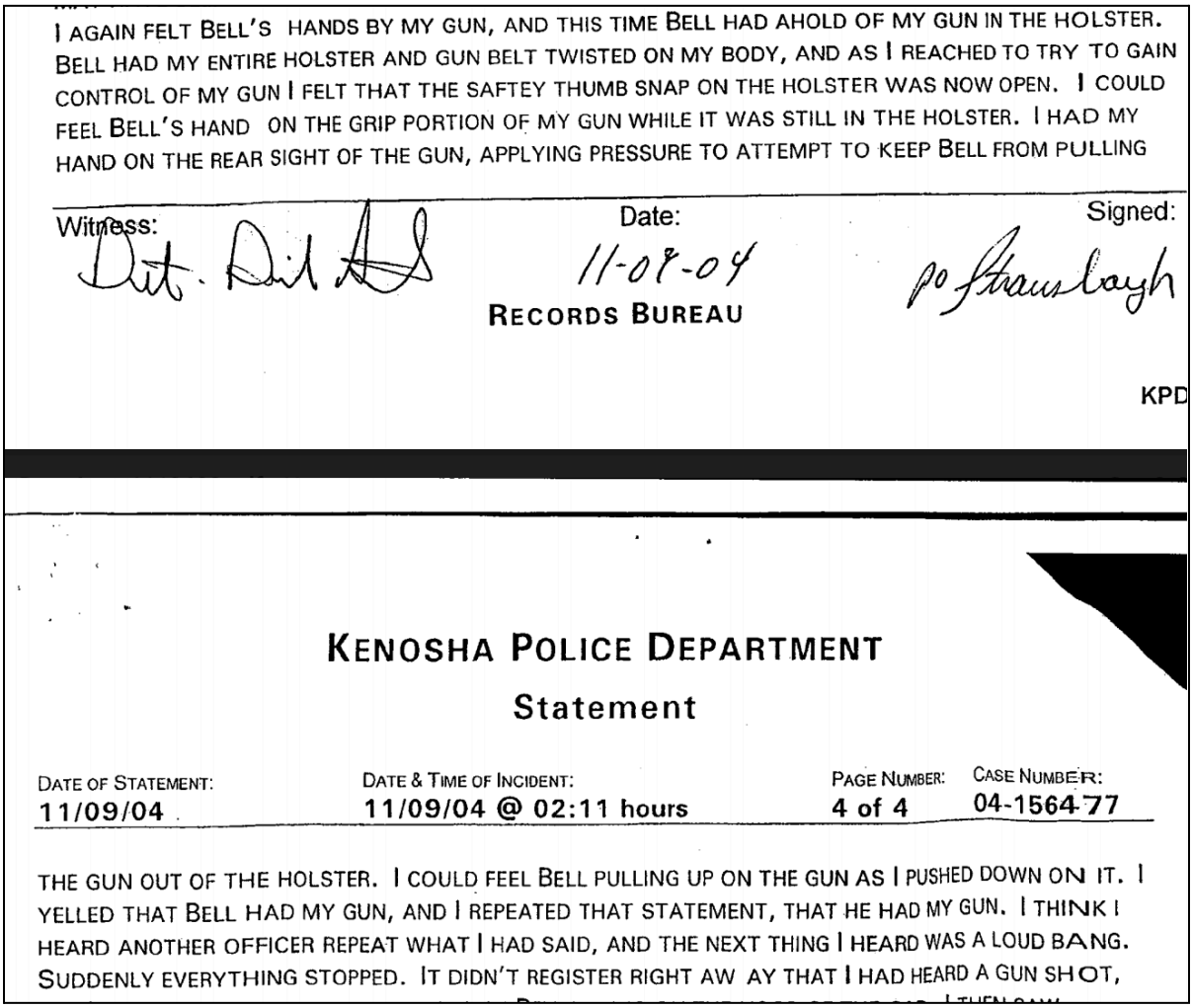
It is instructive for me to copy and paste what I wrote from page 4 to page 6 of my February 28th Grievance (Appendix Q) regarding Officer Strausbaugh statement, that was taken within hours of the shooting. (Portions that were copied and pasted are in italicized fonts.)

[15] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman's affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh's holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver's side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh's understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

From the time of the deadly encounter, it has been the position of the involved officers and the city that Michael E. Bell was shot in the head point blank to end an extremely aggressive attempt to forcibly disarm Strausbaugh. This remains the official account as determined by what most knowledgeable observers consider a deeply flawed and rushed official investigation.

In Officer Strausbaugh's initial--contemporaneously written--statement taken on November 9, 2004, just hours after the shooting, Strausbaugh reported

Screenshot, from, ***Exhibit 44****, pages 3 - 4:*



I AGAIN FELT BELL'S HANDS BY MY GUN, AND THIS TIME BELL HAD AHOLD OF MY GUN IN THE HOLSTER. BELL HAD MY ENTIRE HOLSTER AND GUN BELT TWISTED ON MY BODY, AND AS I REACHED TO TRY TO GAIN CONTROL OF MY GUN I FELT THAT THE SAFTEY THUMB SNAP ON THE HOLSTER WAS NOW OPEN. I COULD FEEL BELL'S HAND ON THE GRIP PORTION OF MY GUN WHILE IT WAS STILL IN THE HOLSTER. I HAD MY HAND ON THE REAR SIGHT OF THE GUN, APPLYING PRESSURE TO ATTEMPT TO KEEP BELL FROM PULLING

Witness: Dit. Det Date: 11-09-04 Signed: po Strausbaugh

RECORDS BUREAU

KPD

KENOSHA POLICE DEPARTMENT

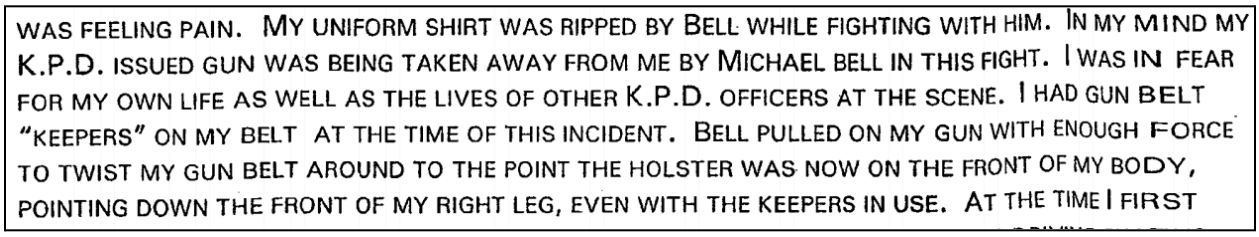
Statement

DATE OF STATEMENT:	DATE & TIME OF INCIDENT:	PAGE NUMBER:	CASE NUMBER:
11/09/04	11/09/04 @ 02:11 hours	4 of 4	04-1564-77

THE GUN OUT OF THE HOLSTER. I COULD FEEL BELL PULLING UP ON THE GUN AS I PUSHED DOWN ON IT. I YELLED THAT BELL HAD MY GUN, AND I REPEATED THAT STATEMENT, THAT HE HAD MY GUN. I THINK I HEARD ANOTHER OFFICER REPEAT WHAT I HAD SAID, AND THE NEXT THING I HEARD WAS A LOUD BANG. SUDDENLY EVERYTHING STOPPED. IT DIDN'T REGISTER RIGHT AW AY THAT I HAD HEARD A GUN SHOT,

Further, on page 4 of his statement, Officer Strausbaugh reported:

Screenshot, from. ***Exhibit 44****, page 4:*



WAS FEELING PAIN. MY UNIFORM SHIRT WAS RIPPED BY BELL WHILE FIGHTING WITH HIM. IN MY MIND MY K.P.D. ISSUED GUN WAS BEING TAKEN AWAY FROM ME BY MICHAEL BELL IN THIS FIGHT. I WAS IN FEAR FOR MY OWN LIFE AS WELL AS THE LIVES OF OTHER K.P.D. OFFICERS AT THE SCENE. I HAD GUN BELT "KEEPERS" ON MY BELT AT THE TIME OF THIS INCIDENT. BELL PULLED ON MY GUN WITH ENOUGH FORCE TO TWIST MY GUN BELT AROUND TO THE POINT THE HOLSTER WAS NOW ON THE FRONT OF MY BODY, POINTING DOWN THE FRONT OF MY RIGHT LEG, EVEN WITH THE KEEPERS IN USE. AT THE TIME I FIRST

What Strausbaugh is describing is a life-and-death struggle over his service weapon. Strausbaugh's description centers on the assertion Bell grabbed his holstered weapon with such force the weapon was pulled along Strausbaugh's gun belt from his right hip to the front of his body. Strausbaugh also indicates that Bell was able to do this despite Strausbaugh having a full set of "keepers" deployed on his gun belt.[16]

Officers who have worn a police/security duty belt in a proper manner for any period of time know such a feat really would require a great deal of force.

Furthermore, it was Bell's allegedly forceful and aggressive attempt to disarm Strausbaugh that led Gonzales, on Lt. Kreuger's order, to shoot Bell in the head to end the mistakenly perceived imminent threat to their lives. Their mistaken perception formed their core justification for the use of deadly force.

In paragraph #2 of Graveley's April 29, 2021 response (Exhibit 195) Graveley reports that a previous District Attorney Robert Jambois refused to file criminal charges against the involved officers in the 2004 shooting of Michael Bell. Graveley writes the following sentence in the first paragraph of that letter: "I [Graveley] also reviewed some of the materials submitted to Robert Jambois for his original review and his findings of facts and conclusions."

It would have also been wise for Graveley to review Jambois findings of facts and conclusions again, before he submitted his April 28, 2021 response. A review on his part could have prevented him from filing this response, which, quite honestly, compounds his deception.

I cited Jambois' findings of fact and conclusions from pages 6-7 of my February 28th Grievance. (Appendix Q) It is instructive for me to copy and paste what I wrote. (Portions that were copied and pasted are in italicized fonts.)

[16] "Keepers" are narrow straps of either leather or strong mesh material that assist in holding/securing a wider police duty belt to the narrower trouser belt upon which the duty belt is anchored. The keepers secure and prevent the items on the duty belt, such as handcuffs, flashlight, and ammunition holders, and a holstered handgun from shifting or moving along a duty belt. The movement of these items would not just be inconvenient, but could cause danger for the officer.

*Indeed, in his November 2004 memo,[17] (**Exhibit 47**) then Kenosha County District Attorney Robert Jambois relied on the officers' apparently mistaken perceptions to conclude their use of deadly force was justified:*

*Screenshot, from, **Exhibit 47**, **page 6:***

> Strausbaugh then felt Bell's hands on his gun. Bell had a hold of Strausbaugh's gun in the holster, and Bell had twisted the holster and gun belt around to the front of Strausbaugh's body. Strausbaugh felt the safety thumb strap on the holster open. He could feel Bell's hand on the grip portion of Strausbaugh's gun while it was still in the holster. Officer Strausbaugh had his hand on the rear side of the gun, applying pressure to keep the weapon in the holster and to keep Bell from pulling the gun out of the holster. Strausbaugh could feel Bell pulling up on the gun as Strausbaugh was pushing down on the gun. Strausbaugh shouted out that Bell had his gun. Strausbaugh heard another officer repeat what Strausbaugh had said and the next thing Strausbaugh heard was a loud shot.

*Screenshot, from, **Exhibit 47**, **page 6:***

> scene. Strausbaugh reported that as his gun was being taken away from him by Bell, he was in fear for his own life as well as the lives of other KPD officers at the scene. He reported that Bell had pulled his gun with enough force to twist his gun belt around to the point where the holster was now in the front of Strausbaugh's body, pointing down to the front of Strausbaugh's right leg.

*Screenshot, from, **Exhibit 47**, **page 6:***

> Officer Weidner then turned toward the fight and he heard Strausbaugh yelling in a terrified voice, "He's got my gun." Weidner heard Strausbaugh yell this several times, and he looked toward Officer Strausbaugh's gun and he could see a hand on the top of the gun, which was still in the holster. He observed Strausbaugh twist his hip area to try and direct his holster away and his holster moved toward the center of his hip area. At that point, he heard a gunshot and everything stopped.

I continued with this passage by writing the following on pages 7-8 of my February 28th Grievance. (Appendix Q) (Portions that were copied and pasted are in italicized fonts.)

Officer Weidner, other officers, and civilian witnesses on the scene described Officer Strausbaugh making several terrified screams that Bell had his gun. Yet, Graveley,

[17] What Graveley refers to as a "finding of facts and conclusions", I refer to as a "memo."

apparently to support his argument for the unlikelihood of finding "touch DNA", ignores and dismisses all of these accounts when he writes in the September 27, 2017, memo that Bell ". . .simply touched. . ." [Strausbaugh's gun] ". . .for an extremely limited period of time. . ."

Graveley cannot have it both ways.

That is, he ignores the officers' contemporaneous statements in order to minimize the forensically important fact that there was absolutely no DNA from Michael E. Bell on Strausbaugh's gun and holster.

Graveley refuses to consider the alternative explanation that the absence of Bell's DNA was because Bell never attempted to disarm Strausbaugh. Or that, instead, likely unbeknownst to Strausbaugh, his holstered gun was caught on the car mirror.[18]

If Graveley truly believes--despite the officers' official accounts--that Bell's DNA was not present because Bell "simply touched" the gun "for an extremely short period of time," then he must conclude the shooting was unjustified. That is, Graveley's analysis can only mean the officers were not facing an imminent threat of death or great bodily harm and therefore did not meet the legal standard for use of deadly force in self defense.[19]

Graveley claimed he used the words "simply touched" because the DNA involved is "touch DNA."

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[18] Exhibit 3, Russell Beckman affidavit, Nov. 20, 2012.

[19] New information (documented January 30, 2021) will be presented later in this appendix related to Graveley's involvement in the homicide prosecution of Dalquavis Ward and the critical touch DNA evidence in this case that was discovered on a door knob by a Wisconsin State Crime Lab Analyst. The Criminal Complaint (Exhibit 152) for this case has the following sentence on page 2: "As the defendant reaches the back (west) side of the business he attempts to open a door marked as "Private" which is locked by grasping the door knob with his bare hand." The analyst saw the defendant grasp the door knob as she reviewed surveillance video from the scene. How could it happen that touch DNA would be left on a door knob by someone merely grasping it while no touch DNA was left on a handgun during a fierce physical struggle over this weapon? According to the official account, Michael Bell allegedly attempted to forcibly disarm Officer Strausbaugh. This allegedly resulted in a life-and-death struggle from Strausbaugh's handgun that required the officers to shoot and kill Bell to save their lives. So, are we to believe that such a fierce struggle between Bell and Officer Strausbaugh over his gun would result in none of Bell's touch DNA being left on the gun, while merely grasping a door knob results in the suspect leaving touch DNA that results in him being convicted of murder:? The answer is clearly that we can not believe the former, but we can believe the latter. The lack of Bell's touch DNA on Strausbaugh's handgun is powerful evidence that supports the Bell investigative team's belief that Bell was not attempting to disarm Strausbaugh when Bell was shot.

What? Does that mean that Graveley considers “touch DNA” more refined and elegant than the unsophisticated DNA that is found in bodily fluids? I shouldn’t make a joke, but Graveley’s statement is laughable.

Also in his response paragraph, Graveley attempts to slither around his deception by writing that he uses the terms *“for an extremely limited period of time”* to distinguish it from a case of full possession or even ownership of an item where touch DNA is being sought. In this case the item is Officer Strausbaugh’s handgun.

Wow! That is very creative and is an example of wishful thinking.

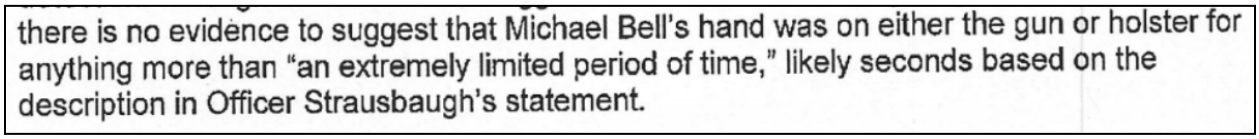
Officer Strausbaugh clearly indicates in his statement that Michael Bell actually possessed his gun. Yes, according to Strausbaugh, the gun remained in the holster while Bell moved the holstered handgun from its normal position on the right side of Strausbaugh’s body, along the duty belt, to the front of Strausbaugh’s body. If you believe Officer Strausbaugh’s account,[20] a strong argument could be made that both Bell and Strausbaugh had full possession of that handgun. Bell relinquished his possession when the .45 caliber bullet penetrated his right temple.

Graveley starts out the last sentence of his paragraph by stating the obvious. He writes: “. . .the described struggle over Officer Strausbaugh’s gun was significant. . .”

Graveley should have stopped right there since that is a true statement.

However, Graveley does not. He unwisely continues by writing the following:

Screenshot of the last three lines of Graveley’s paragraph #5 of his April 29, 2021 response. (Exhibit 195)


there is no evidence to suggest that Michael Bell’s hand was on either the gun or holster for anything more than “an extremely limited period of time,” likely seconds based on the description in Officer Strausbaugh’s statement.

[20] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman’s affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh’s holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver’s side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh’s understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

It is curious that Graveley writes this. Graveley claims there is no evidence to suggest that Bell had his hand on on Strausbaugh's gun for more than "seconds." Graveley bases this on Officer Strausbaugh's statement. Stausbaugh's statement describes some dialog between him and the other three officers at the scene before Bell was shot. However, Strausbaugh's statement does not provide the level of detail regarding the dialog as does the statements of two of the other officers on the scene and directly involved in the shooting, Officer Gonzales and Lt. Krueger.

DA Robert Jambois, in his finding of facts and conclusions, (Exhibit 47) which Graveley acknowledges reading, provides a very detailed description of the dialog between Officers Strausbaugh, Gonzales, and Lt. Krueger immediately before Bell was shot and after Strausbaugh called out in terror that Bell "had his gun." This passage from Jambois' finding of facts and conclusions (Exhibit 47) provides powerful evidence that Graveley is being deceptive in his claim that Bell only had his hand on either Strausbaugh's gun or holster for anything more than an "extremely limited period of time," "likely seconds."

Please read this detailed passage in full. It will clearly show that Graveley's claim is wrong, and intentionally so. The dialog between the officers, and Officer Gonzales' described physical movements, during the time that Officer Strausbaugh was crying out that Bell had his gun and the moment that Bell was shot in the head, is clearly more than a scant few seconds, as Graveley claims.

Screenshot follows on next page

Screenshot of pages 9-10 of Exhibit 47:

Gonzalez then heard Strausbaugh yelling, "He's got my gun," several times. Gonzalez then heard Strausbaugh yell again, "Oh my God, he's got my gun." Gonzalez not only heard what Strausbaugh was yelling but also the sound of Strausbaugh's voice. He reported, "I will never forget the sound of Strausbaugh's voice. It was almost as if he (Strausbaugh) was crying." Gonzalez then ran around the front of the silver car in order to get an angle on the suspect. As he was running around the front of the car, Gonzalez yelled, "Straus, does he still have your gun?" He then heard Strausbaugh yelling, as though terrified and exhausted, and again saying, "Oh, God, he's got my gun." Gonzalez got around the front of the car and put his gun to the suspect's head. He grabbed Bell's head and put the gun next to Bell's head and pulled the trigger and nothing happened. He then pulled the gun back to reposition and as he pulled the gun back, he heard Lt. Krueger yell, "Shoot." As he pulled the gun back, he fired simultaneously to hearing Lt. Krueger order "shoot" shooting Bell in the head.

Lt. Krueger confirms that he ordered Gonzalez to shoot. Lt. Krueger reported that he had drive stunned Michael Bell but that Bell jumped up anyway. At that point, Krueger grabbed Bell from behind in a bear hug. Lt. Krueger could hear Officer Strausbaugh screaming something like, "He has my gun" or "He's got his hand on my gun." Lt. Krueger reports that he pinned Bell against the left front fender of the car but that his arms were still free. Strausbaugh was to Lt. Krueger's right and screamed in a high-pitched desperate voice, "He's got my gun, he's got my gun." Lt. Krueger reported that he had Bell in a bear hug with his head turned to the left, and he knew that Strausbaugh was on his right but he couldn't see what Strausbaugh was doing.

While fighting with Bell, Lt. Krueger looked up and observed Gonzalez standing at the front of the car. When Strausbaugh screamed that the guy had his gun, Lt. Krueger yelled, "If he's got your gun, we're going to have to shoot him." While Lt. Krueger was yelling this, Gonzalez drew his gun from his holster and put it to the

9

side of Bell's head. Gonzalez yelled, "Does he have your gun?" And Strausbaugh yelled in a high-pitched voice, "He's got my gun." Lt. Krueger reported that while this was going on, he expected to hear a gunshot and that one of them was going to get shot. Hearing Strausbaugh yelling, "He's got my gun," Krueger thought that Bell was going to shoot one of them so he told Gonzalez to shoot. Krueger reports that Gonzalez had his gun pressing against the side of the head and he observed Gonzalez pull the trigger but the gun did not fire. He then saw Gonzalez back the gun away slightly from Bell's head and the gun immediately went off.

Clearly, DA Jambois' official report, which Graveley acknowledges reading, debunks Graveley's deceptive claim in the September 17, 2017 letter (Exhibit 49) claim that Bell only had his hand on either Strausbaugh's gun or holster for anything more than an "'extremely limited period of time' 'likely seconds.'"[21]

Yes, this is a case of unethical misrepresentation . Yes, it is also sad that the attorney who unethically misrepresented the "official account" of this police involved shooting is a sitting District Attorney of one of Wisconsin's most populous counties. That is awkward. Many people and regulators would rather not have to deal with this. It could cause citizens to question the legitimacy of the criminal justice system in Kenosha County.

It should not be forgotten what District Attorney Graveley wrote was not just written to Mr. Bell. Graveley entered the September 27, 2017 letter (Exhibit 49) into the record of Bell's John Doe Petition.[22] That makes Graveley's misconduct even more egregious.

[21] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman's affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh's holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver's side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh's understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

[22] Later in this response, I will address Graveley's actions in submitting the September 27, 2017 letter (Exhibit 49) into the record of the John Doe proceeding that Mr. Bell filed with the Circuit court in 2018. I presented this information to the OLR as Addendum 2 (Appendix S) on April 6, 2021. Graveley does not address this anywhere in his April 29, 2021 response to my OLR grievance. I believe that Graveley did not address any issues related to his submission of the September 27, 2017 letter (Exhibit 49) into the John Doe record because the OLR never asked him to. I believe it is possible that the OLR never fully considered, nor acted upon the information in Addendum 2. (Appendix S) As indicated, I will address this in great detail later in this response.

Paragraph 6; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 5: (screenshot of footnote #2 also included)
Link to cited attachment 7. (see pages 95 - 99 of this linked document, Exhibit 199.)
(Attachment 7 is Officer Strausbaugh's written statement that was taken within hours of his encounter with Michael Bell in which Bell was killed.)

> It appears that Mr. Beckman is accusing me of dishonesty, fraud, deceit or misrepresentation in violation of SCR 20:8.4(c) because I did not present a detailed description of the struggle between Michael Bell and Officer Strausbaugh. In the 2017 letter, I was not attempting to provide a factual summary of the events of this 2004 officer involved death. This was a letter written to Mr. Bell who is deeply familiar with the facts. For purposes of what I was trying to convey, which was my professional opinion as to the likelihood of Michael Bell's touch DNA being found on Officer Strausbaugh's gun or holster, the phrase "simply touched by the party…for an extremely limited period of time" is accurate and any assertion to the contrary is a distortion of the context of the letter.[2]

[2] I am including Officer Strausbaugh's statement as attachment 7 as it contains his description of the struggle with Michael Bell, but, again, the purpose of the September 2017 letter was not to present a factual summary to a man (Mr. Bell) who was so completely familiar with the case.

Points addressed in this section:

- Graveley claims, without any basis, that Beckman's issue with Graveley's September 27, 2017 letter is that Graveley did not include a factual summary of the encounter between Bell and the officers in the deadly encounter.
    - Beckman reports that Graveley's claim is not true. Beckman's Grievance is centered on Graveley's misrepresentations in the September 27, 2017 letter and his submission of the letter into the record of the John Doe Petition file by Mr. Bell.[23]

Beckman Response:

It may "appear" to Graveley that I took the extreme step of officially accusing him of serious ethical misconduct in an actual grievance with the Office of Lawyer Regulation just because I have an issue with Graveley not providing a detailed description of the

[23] Later in this response, I will address Graveley's actions in submitting the September 27, 2017 letter (Exhibit 49) into the record of the John Doe proceeding that Mr. Bell filed with the Circuit court in 2018. I presented this information to the OLR as Addendum 2 (Appendix S) on April 6, 2021. Graveley does not address this anywhere in his April 29, 2021 response to my OLR grievance. I believe that Graveley did not address any issues related to his submission of the September 27, 2017 letter (Exhibit 49) into the John Doe record because the OLR never asked him to. I believe it is possible that the OLR never fully considered, nor acted upon the information in Addendum 2. (Appendix S) As indicated, I will address this in great detail later in my response.

[alleged) struggle between Officer Strausbaugh and Bell over Officer Strausbaugh's handgun[24] in the September 27, 2017 letter (Exhibit 49) that is the subject of this grievance.

Although it would be nice for Graveley if it were so, it is not.

My grievance is centered on Graveley's **misrepresentation** of that alleged struggle in the September 27, 2017 letter (Exhibit 49) and several other dubious statements that will be addressed in other parts of this response. Additionally, Addendum 2 (Appendix S) of my grievance describes how Graveley submitted this fraudulent letter to the record of a John Doe Proceeding. Based on the written decision of the Judge, Graveley's submission of this letter affected the Judge's decision. This is what constitutes the misconduct I allege, not what Graveley could have included in the September 27, 2017 letter (Exhibit 49), but did not.

Just for review, Graveley wrote the following in the September 27, 2017 letter (Exhibit 49):

- ". . .where a firearm or holster was simply touched [Strausbaugh's gun and holster] for an extremely limited period of time, you would **almost never** receive a positive test result for that individual's DNA."[25] (bolding added)

- "In other words, I would not expect to find Michael Bell's DNA on the gun or holster based on the factual circumstances of this case."

It is these words mischaracterizing the alleged struggle between Bell and Strausbaugh that are the specific issue I bring to the OLR, not anything Graveley did not write in that letter. For Graveley to argue otherwise is yet another one of his many attempts in his April 29, 2021 response to cloud the issue and divorce himself from any accountability for his misrepresentation of a critical account of an important disputed scenario.

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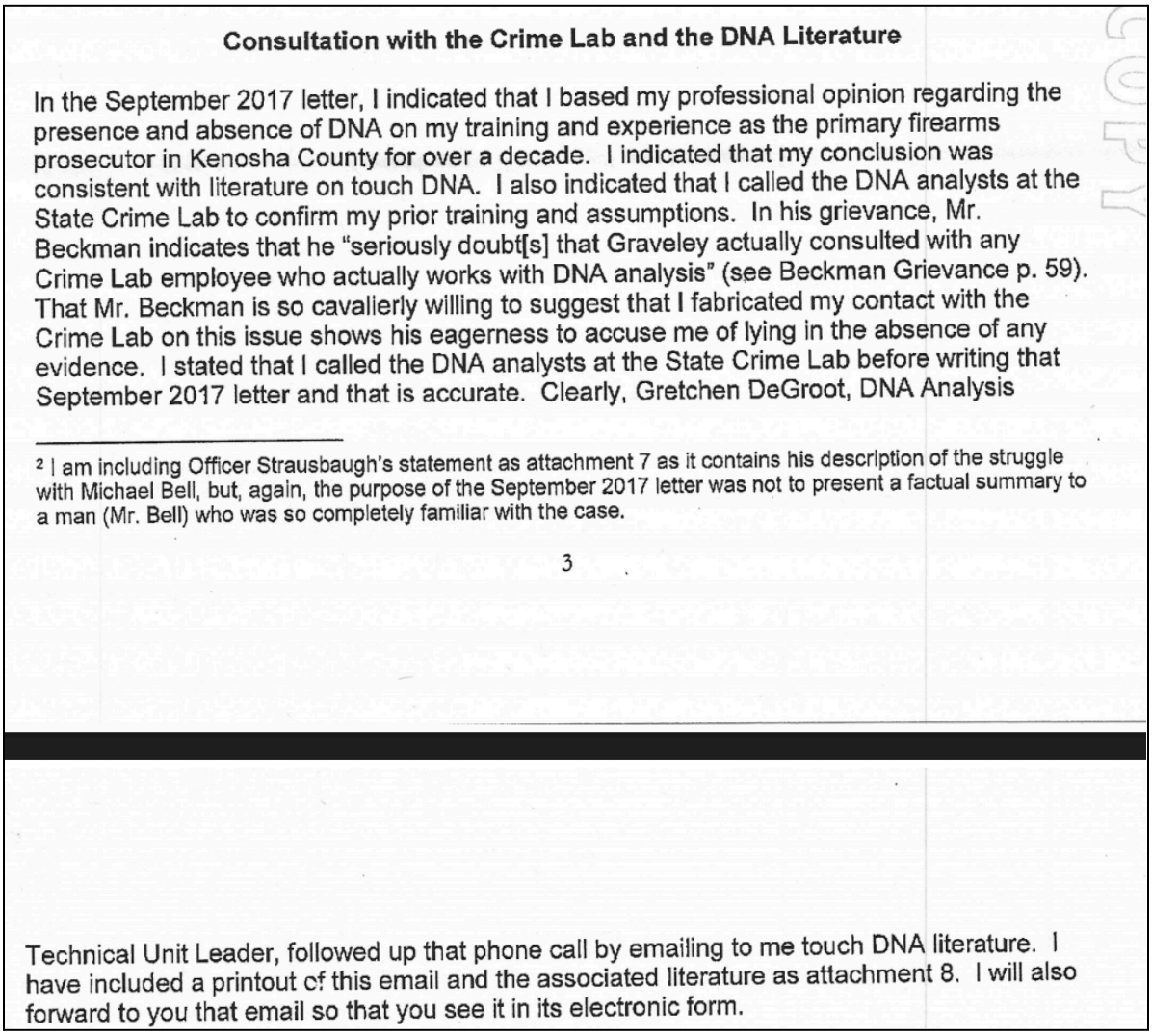
[24] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman's affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh's holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver's side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh's understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

[25] As reported in several places in this response and multiple places in the February 28, 2021 Grievance and subsequent addendums, Graveley intentionally misrepresents the alleged intensity of the struggle between Bell and Officer Strausbaugh over Strausbaugh's handgun.

As evidenced by the information that I have presented in this response, the February 28, 2021 grievance and the two addendums, it is clear that Graveley's words are a misrepresentation of the intensity of alleged struggle between Bell and Officer Strausbaugh. This is despite what Graveley states and any explanation, no matter how creative, he offers to say otherwise.

Paragraph 7; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Pages 5-6:[26]
Link to cited attachment 8. (see pages 100 - 136 of this linked document, Exhibit 199.)
Link to cited Beckman Grievance. Beckman labels this Appendix Q.
Link to the full September 27, 2017 letter cited in this paragraph.[27] (Exhibit 49)



Consultation with the Crime Lab and the DNA Literature

In the September 2017 letter, I indicated that I based my professional opinion regarding the presence and absence of DNA on my training and experience as the primary firearms prosecutor in Kenosha County for over a decade. I indicated that my conclusion was consistent with literature on touch DNA. I also indicated that I called the DNA analysts at the State Crime Lab to confirm my prior training and assumptions. In his grievance, Mr. Beckman indicates that he "seriously doubt[s] that Graveley actually consulted with any Crime Lab employee who actually works with DNA analysis" (see Beckman Grievance p. 59). That Mr. Beckman is so cavalierly willing to suggest that I fabricated my contact with the Crime Lab on this issue shows his eagerness to accuse me of lying in the absence of any evidence. I stated that I called the DNA analysts at the State Crime Lab before writing that September 2017 letter and that is accurate. Clearly, Gretchen DeGroot, DNA Analysis

[2] I am including Officer Strausbaugh's statement as attachment 7 as it contains his description of the struggle with Michael Bell, but, again, the purpose of the September 2017 letter was not to present a factual summary to a man (Mr. Bell) who was so completely familiar with the case.

3

Technical Unit Leader, followed up that phone call by emailing to me touch DNA literature. I have included a printout of this email and the associated literature as attachment 8. I will also forward to you that email so that you see it in its electronic form.

[26] Footnote #2 appears in this image due to the transition to a new page.

[27] Mr. Bell's address was redacted from this letter to protect his privacy.

Points addressed in this section:

- In this paragraph, Graveley fails to fully address several statements he wrote in the September 27, 2017 letter regarding his communications with the crime lab.
- Beckman provides a detailed discussion about exactly what Graveley did not address and possible reasons why he did do so, including the likely reason that what he wrote in the September 27, 2017 letter about his communications with the crime lab staff was fabricated.
- Beckman criticizes the OLR for its failure to perform basic investigatory functions in their handling of this Grievance.
- Beckman provides information about pending public records requests that have been filed with the Wisconsin Department of Justice and the Kenosha County District Attorney related to this Grievance.
- Beckman addresses Graveley's failure to produce or cite, in detail, any scientific literature that he claims supports his position on touch DNA is the Bell case
- Beckman summarizes the four journal articles Graveley received from a State Crime Lab DNA analyst and shows that three of the articles are irrelevant to the Bell case and one of these articles actually refutes Graveley's position of touch DNA in the Bell case.

Beckman Response:

This is exactly what Graveley wrote in the September 27, 2017 letter (Exhibit 49) regarding his communications with the crime lab:

- "I [Graveley] again called the DNA analysts at the State Crime Lab to confirm my prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death."

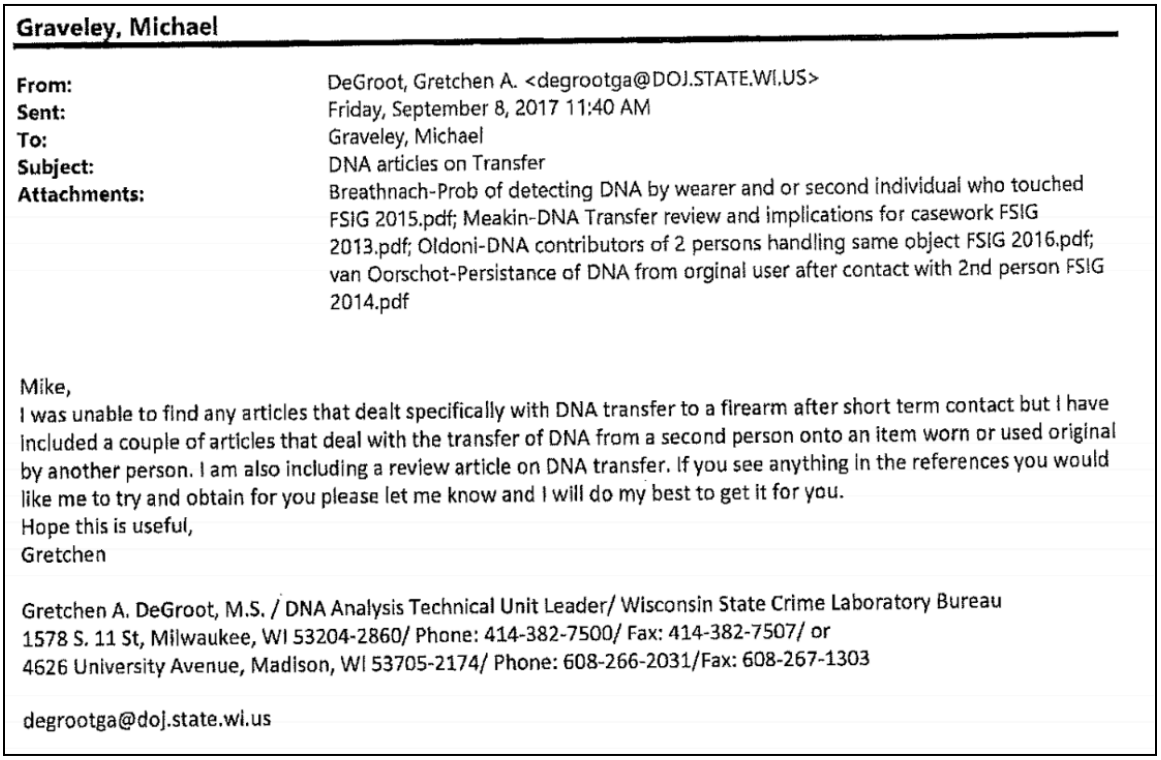
I will first address what is **not** in Graveley's response:

- In his response, Graveley does not identify the other DNA analysts he called in addition to Gretchen DeGroot. Remember, in the September 27, 2017 letter (Exhibit 49) Graveley writes that he called DNA analysts (plural).
- In his response, Graveley does not report if he actually spoke with Gretchen DeGroot and the other DNA analysts when he called the DNA analysts.
- In his response, Graveley does not provide any information about if he left telephone messages with Gretchen DeGroot and other DNA analysts or if he had actual telephone conversations with DeGroot and other DNA analysts. If

Graveley did have actual telephone conversations with DeGroot and other DNA analysts, what were the content and nature of these telephone conversations?

- In his response, Graveley provided an email that he received from Gretchen DeGroot on February 8, 2017. (See screenshot below; Attachment 8. (page 101, Exhibit 199.) This email does not have any language that supports Graveley's claim, in the September 27, 2017 letter (Exhibit 49) that Graveley, ". . .was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death."
    - When did DeGroot tell this to Graveley? What were the circumstances of Graveley being told? Graveley does not address this in his response.
    - Did the other DNA analysts also tell this to Graveley? If so, what are the circumstances of those communications? Graveley does not address this in his response.
    - Graveley uses the words, ". . .was again told. . ." in this sentence in the September 27, 2017 letter (Exhibit 49). In his response, Graveley does not report the circumstances as to the other time(s) he was ". . .told [by DNA analysts] that there would be no expectation of DNA results under the facts and circumstances described in your son's death." Graveley does not address this in his response.

Screenshot of actual email from Gretchen DeGroot, DNA Analysis Technical Unit Leader to Graveley. Attachment 8. (page 101, Exhibit 199.)



Graveley, Michael

From: DeGroot, Gretchen A. <degrootga@DOJ.STATE.WI.US>
Sent: Friday, September 8, 2017 11:40 AM
To: Graveley, Michael
Subject: DNA articles on Transfer
Attachments: Breathnach-Prob of detecting DNA by wearer and or second individual who touched FSIG 2015.pdf; Meakin-DNA Transfer review and implications for casework FSIG 2013.pdf; Oldoni-DNA contributors of 2 persons handling same object FSIG 2016.pdf; van Oorschot-Persistance of DNA from orginal user after contact with 2nd person FSIG 2014.pdf

Mike,
I was unable to find any articles that dealt specifically with DNA transfer to a firearm after short term contact but I have included a couple of articles that deal with the transfer of DNA from a second person onto an item worn or used original by another person. I am also including a review article on DNA transfer. If you see anything in the references you would like me to try and obtain for you please let me know and I will do my best to get it for you.
Hope this is useful,
Gretchen

Gretchen A. DeGroot, M.S. / DNA Analysis Technical Unit Leader/ Wisconsin State Crime Laboratory Bureau
1578 S. 11 St, Milwaukee, WI 53204-2860/ Phone: 414-382-7500/ Fax: 414-382-7507/ or
4626 University Avenue, Madison, WI 53705-2174/ Phone: 608-266-2031/Fax: 608-267-1303

degrootga@doj.state.wi.us

Graveley's response and lack of response is odd. This is a significant issue. Does the OLR understand this? Did the OLR ask Graveley to respond? Why didn't the OLR ask Graveley again or ask him for the first time to respond when they noticed that his response does not address this issue. Did Graveley inadvertently neglect to respond to this issue? (If so, he should be allowed another opportunity to provide a proper response that should be verified with phone or email records and by interviews with those Graveley claims to have consulted.) Why didn't the OLR interview Gretchen DeGroot to find out exactly if she did concur with Graveley and what factual scenario Graveley actually presented to her? There are many very important unanswered questions

If Graveley's failure to respond with sufficient information is an intentional omission, it causes me to reasonably conclude that Graveley simply made this up.

This is important because Graveley entered the September 27, 2017 letter (Exhibit 49) into the record of Bell's John Doe Petition.[28] Graveley's statement about the concurrence of State Crime Lab DNA analysts with his statement regarding the lack of DNA on Officer Strausbaugh's handgun or holster would understandably and appropriately have a tremendous influence on the decision of the Judge. The fact that it appears that Graveley's statement about DNA analysts concurrence is not true--actually made up, is abhorrent.

Graveley makes a point in his response to attack me for questioning his statement. Graveley wrote, "that Mr. Beckman is so cavellerily willing to suggest that I [Graveley] fabricated my contact with the Crime Lab on this issue shows his eagerness to accuse me [Graveley] of lying absent any evidence."

A few thoughts related to Graveley's disparaging words:

- I have presented a great deal of evidence to support my allegations, much of it is Graveley's own words.
- I am very likely correct with my accusation.

[28] Later in this response, I will address Graveley's actions in submitting the September 27, 2017 letter (Exhibit 49) into the record of the John Doe proceeding that Mr. Bell filed with the Circuit court in 2018. I presented this information to the OLR as Addendum 2 (Appendix S) on April 6, 2021. Graveley does not address this anywhere in his April 29, 2021 response to my OLR grievance. I believe that Graveley did not address any issues related to his submission of the September 27, 2017 letter (Exhibit 49) into the John Doe record because the OLR never asked him to. I believe it is possible that the OLR never fully considered, nor acted upon the information in Addendum 2. (Appendix S) As indicated, I will address this in great detail later in my response.

- Graveley could have proven that he did not fabricate his claim by simply providing the basic information to prove he is being honest. Upon verification of this information, his words will be proven to be truthful.

My suspicions that Graveley may have fabricated these contacts was fueled by the very words that Graveley used in the September 27, 2017 letter (Exhibit 49) about his claim of Crime Lab concurrence. The use of these words and their context are not typically used by law enforcement leaders in written communications. I base my inferences related to these observations on my long time professional experience as a detective with the Kenosha Police Department. Graveley's use of these words allowed me to infer that this claim was fabricated. Let me explain.

- "I [Graveley] *again* called the DNA *analysts*. . ."
    - Why use the word "again"? Graveley only needed one concurrence over the course of time to cite in the September 27, 2017 letter (Exhibit 49).
    - Someone in Graveley's position does not, nor rarely will, consult with more than one expert regarding such a matter. The opinion of one qualified Crime Lab DNA expert is sufficient with such a basic issue, Graveley's claim that he communicated with more than one DNA analyst about this issue, weakens the credibility of his claim.
- "was *again* told"
    - I had the same concerns as stated directly above.
- "there would be no expectation of DNA results under the facts and circumstances described in your son's death."
    - Based upon all of the extensive information that I provided in every document I submitted to the OLR in this process, I knew that if Graveley accurately provided the actual fact scenario of the officers at the scene of the Bell shooting,[29] no Wisconsin Crime Lab DNA analyst would concur with Graveley's opinion that there would be no expectation of DNA results.

I previously indicated in this section that it appears that the OLR took no investigatory actions based either information that both Graveley and I provided pursuant to this Grievance. There are many simple investigatory actions that the OLR could have

[29] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman's affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh's holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver's side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh's understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

taken, but has not. The action of the OLR was to merely dismiss the Grievance, citing insufficient evidence to proceed. Does the OLR have any duty to conduct even the most basic steps of an investigation? If it doesn't or refuses to perform any investigatory actions, why does the OLR exist?

With my grievance, the most basic investigative action the OLR could take would be to verify Graveley's statement in the September 27, 2017 letter (Exhibit 49) regarding his claims about Crime Lab concurrence with his position on the lack of relevance with the absence of Bell's DNA on Officer Strausbaugh handgun and holster.

Why didn't the OLR interview DNA analyst Gretchen DeGroot and ask her, "What did Graveley say to you and what did you say to him?"

Does the OLR expect me to perform that basic investigative step? What if I did? Does anyone believe that I could actually get DeGroot on the phone? What would happen if I showed up at the door to the Crime Lab? Would they let me in? Does anyone really believe that DeGroot would talk to me even if I was able to get her on the phone or managed to manipulate myself into a face to face encounter with her? If I was her, I would not.

Any investigatory actions I can responsibly, ethically, and effectively take must be within the confines of the law. Wisconsin's public records law does provide a limited avenue that can be used.

On April 16, 2021, Attorney Christa Westerberg, who is working with Michael Bell, filed public records requests with both the Wisconsin Department of Justice and the Kenosha County District Attorney's Office seeking emails, correspondence, and phone records between Graveley and DNA analysts related to communications regarding Graveley's DNA claim in the September 27, 2017 letter (Exhibit 49). These records requests are Exhibits 202 and 203.

These entities complied with these requests. The presentation and discussion of the records that were obtained begin on page 95 of this response.

Discussion of journal articles Gretchen DeGroot emailed to Graveley as attachments and his response to studies cited in Grievance

DNA Analyst Gretchen DeGroot sent four journal articles as attachments to her September 8, 2017 email to Graveley. Each of these journal articles addressed some aspect of DNA transfer from various objects and people.

Curiously, Graveley does not address any aspect of these four journal articles except for a brief mention of the Oldoni study related to "duration of the contact and shedder status of the individual." (See Graveley's response, and my response to paragraph 11.)

It should also be noted that in the September 27, 2017 letter (Exhibit 49) Graveley wrote the following about his position on touch DNA and its relevance in the Bell case, "This is consistent with the literature on touch DNA." Graveley reaffirms this statement in the paragraph of his response that is the subject of this current discussion. (paragraph #7, see above.)

Despite this statement, which I believe Graveley simply made up, Graveley does not cite nor offer any academic studies that supports his statement that his position is "consistent with the literature on touch DNA."

In his response paragraphs 8, 9, 10, and 11, Graveley responds to only two of the eleven studies that I offered and cited in my February 28th Grievance. (pages 8 - 23, Appendix Q) In addition, in footnote #3 of his response, (see response to paragraph #11) Graveley responds to a sentence in one study that is citing two other studies that I wrote about in my initial Grievance.

Remember that Graveley wrote the following in the September 27, 2017 letter (Exhibit 49) that his position of touch DNA in the Bell case is "consistent with the literature on touch DNA."

Once again, I ask, "really?" In his response, Graveley continues to say this is so. However, he offers no evidence that his statement is correct. He offers no studies nor other scientific literature to support his claim. I did a literature search and found nothing to support Graveley's statement. I described this search in my initial February 28, 2021 Grievance. (Appendix Q) I asked the OLR to challenge Graveley to produce the scientific literature he claims supports his position. Either the OLR never asked Graveley to present the literature or, more likely, Graveley can not, because it does not exist. This is powerful evidence that Graveley's statement in the September 27, 2017

letter (Exhibit 49) that his position of touch DNA in the Bell case is "consistent with the literature on touch DNA." is false and simply fabricated by Graveley.

This is important because Graveley entered the September 27, 2017 letter (Exhibit 49) into the record of Bell's John Doe Petition.[30]

Now we can discuss the four articles Gretchen DeGroot emailed to Graveley on September 8, 2017:

Graveley offers no analysis or discussion about these articles.[31] I will do so to conclude the response to this paragraph.

Article #1: This article was entered as Exhibit 212:

Breathnach, M., Williams, L., McKenna, L., & Moore, E. (2016). Probability of detection of DNA deposited by a habitual wearer and/or the second individual who touched the garment. *Forensic Science International: Genetics*, *20*, 53-60. Retrieved on May 23, 2021 from: https://www.researchgate.net/profile/Michelle-Breathnach/publication/283048860_Probability_of_detection_of_DNA_deposited_by_habitual_wearer_andor_the_second_individual_who_touched_the_garment/links/5bbf02d845851572315edce8/Probability-of-detection-of-DNA-deposited-by-habitual-wearer-and-or-the-second-individual-who-touched-the-garment.pdf

Comments:

This study had no relevance to the Bell case. Nothing in this study refutes or supports my position nor Graveley's position.

[30] Later in this response, I will address Graveley's actions in submitting the September 27, 2017 letter (Exhibit 49) into the record of the John Doe proceeding that Mr. Bell filed with the Circuit court in 2018. I presented this information to the OLR as Addendum 2 (Appendix S) on April 6, 2021. Graveley does not address this anywhere in his April 29, 2021 response to my OLR grievance. I believe that Graveley did not address any issues related to his submission of the September 27, 2017 letter (Exhibit 49) into the John Doe record because the OLR never asked him to. I believe it is possible that the OLR never fully considered, nor acted upon the information in Addendum 2. (Appendix S) As indicated, I will address this in great detail later in my response.

[31] APA citations of the four articles Ms. DeGroot sent to Graveley as attachments to this email. Each article was entered as an exhibit.

This study involved a controlled experiment involving men's underwear. The study was intended to determine the frequency of finding identifiable DNA of females who handled underwear that was worn by male research subjects.

Article #2: This article was entered as Exhibit 213:

Meakin, G., & Jamieson, A. (2013). DNA transfer: review and implications for casework. *Forensic Science International: Genetics*, *7*(4), 434-443. Retrieved on May 23, 2021 from: https://rollinsandchan.com/wp-content/uploads/2015/04/Meakin-and-Jamieson-DNA-Transfer-Review-and-Implications-for-Casework-FSIG-2013.pdf

Comments:

This study had some relevance to the Bell case. It is a review of some of the current [at that time, 2013.] literature of trace amounts of DNA. It should be noted that some of the information in this study is contrary to Graveley's position and supports my position.

On page 5, this article states, *"It is believed that DNA is more readily deposited on some surfaces than others: rougher surfaces may collect more DNA than smooth surfaces."* This is in accord with my extensive discussion that the textured, diamond-back grip of Officer Strausbaugh's handgun is a surface that increases the likelihood of the transfer of Michael Bell's DNA to Strausbaugh's handgun, **if Bell had actually touched the handgun.**

On page 5, this article also states, *"It is commonly assumed that the amount of DNA deposited on a surface will be increased with increased time and friction applied to that surface. Considering time first, the published data actually suggests length of contact is not a significant factor. In the first touch experiments, it was observed that similar amounts of DNA were recovered from a handled object, regardless of the length of time it was held, suggesting that the majority of DNA transfer occurs at initial contact."*

This certainly refutes Gravelely's contention from the September 27, 2017 letter (Exhibit 49) ". . .where a firearm or holster was simply touched [Strausbaugh's gun and holster] for an extremely limited period of time, you would **almost never** receive a positive test result for that individual's DNA." (bolding added)

Further on page 5, this article also states, *"Regarding the nature of the contact; although it may appear intuitive that increased friction would increase the amount of*

DNA deposited through touch, there appears to be no published literature to support this hypothesis."

It should be noted that this article was accepted for publication in March, 2013. After this article was published several studies were published that state that increased friction and pressure actually do increase the likelihood that touch DNA being deposited on a surface. I actually quoted one of these studies, published in May, 2017, in my February 28, 2021 Grievance (page 11, Appendix Q)

This is a screenshot of this part of page 11, Appendix Q: (Link to Exhibit 162)

> A study of that compares the rates of successful touch DNA recovery from objects found at crime scenes in crime labs in the United States to police forces in the United Kingdom comes the following:
>
> *'From a review of the number of useful profiles obtained in this study, the SCCCL's [Santa Clara County Crime Lab] case acceptance policies for trace DNA evidence now include analysis of items left behind at the crime scene by the offender, items that frequently come in contact with only one victim (e.g., the primary/single driver of a vehicle), and* ***items which may have been roughly handled or tightly gripped for a period of time where transference of cellular material is more likely (e.g., the handle or grip portion of an object such as a knife or baseball bat).***"[11] (bolding added.) (Bond, J. W., & Weart, J. R. pages 759-760; Exhibit 162)[12]

Article #3: This article was entered as Exhibit 214:

Oldoni, F., Castella, V., & Hall, D. (2016). Shedding light on the relative DNA contribution of two persons handling the same object. *Forensic Science International: Genetics*, *24*, 148-157.[32]

Comments:

This study had no relevance to the Bell case. Nothing in this study refutes or supports my position nor Graveley's position.

[32] I was unable to find a copy of this journal article in the collections of the libraries where I have access. In order to avoid the time and expense of either inter-library loan or online purchase, I opted to extract this journal article from a pdf copy of Exhibit 199, attachment 8 by use of "Acrobat DC Pro" software.

This study is a controlled experiment involving the relative contributions of touch DNA between two sets of individuals who both handled regular household items (no firearms) for varying periods of time.

Note: In Graveley's response paragraph #11, Graveley cites this study's discussion of the duration of contact and "the shredder status of the individual" and how these two variables affect the amount of touch DNA deposited on an object. Despite Graveley's citation of this information from this study, I still see no relevance in this article. I will present a detailed response to Graveley citing this part of this article in my response to Graveley's paragraph #11. (Page 50 of this response.)

Article #4: This article was entered as Exhibit 215:

van Oorschot, R. A., Glavich, G., & Mitchell, R. J. (2014). Persistence of DNA deposited by the original user on objects after subsequent use by a second person. *Forensic Science International: Genetics*, *8*(1), 219-225.[33]

Comments:

This study had no relevance to the Bell case. Nothing in this study refutes or supports my position nor Graveley's position.

This study is very similar to the aforementioned Oldoni study. (Exhibit 214) This study is a controlled experiment involving the relative contributions of touch DNA between two sets of individuals who both handled regular household items (no firearms) for varying periods of time.

Paragraph 8; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 6:

> Mr. Beckman cites a number of articles specifically relating to touch DNA on firearms. Two of these articles involve testing of firearms actually submitted to crime labs and so these articles tend to reflect my own experience and observations as the primary gun prosecutor in Kenosha County for over a decade (as opposed to articles focused on "controlled experiments"). Both of these articles were in existence at the time I wrote the September 2017 letter and, upon examination, both support my professional opinion as stated in the letter.

[33] I was unable to find a copy of this journal article in the collections of the libraries where I have access. In order to avoid the time and expense of either inter-library loan or online purchase, I opted to extract this journal article from a pdf copy of Exhibit 199, attachment 8 by use of "Acrobat DC Pro" software.

Point addressed in this section:

- Beckman discusses Graveley's decision to respond to only two of the eleven studies Beckman presented in his Grievance and challenges Graveley assertion that these two studies support his position on touch DNA in the Bell case.

Beckman Response:

Initially, I will pose this question to Graveley: What literature do you present to support your statement in the September 27, 2017 letter (Exhibit 49) that your position of touch DNA in the Bell case is "consistent with the literature on touch DNA."? You made this bold claim. I challenge you to back it up.

Graveley has offered only one comment in his response related to the four articles that Gretchen DeGroot emailed to him.[34] I actually read all four of these articles and discovered that one of them, Meakin, G., & Jamieson, A. (2013), (**Article #2:** This article was entered as Exhibit 213) actually refutes Graveley's position on touch DNA in the Bell case.[35] It is clear why Graveley ignored this article.

Graveley asserts, apparently based solely on his own accord, that he will only respond to only two of the eleven studies that I offered and cited in my February 28th Grievance. (pages 8 - 23, Appendix Q) He refuses to address studies involving "controlled experiments," as if those have no value. In addition, in footnote #3 of his response, (see response to paragraph #11) Graveley responds to a sentence in one study that is citing two other studies that I wrote about in my initial Grievance.

There is a very specific reason Graveley chooses to ignore most of the studies I presented in my February 28th Grievance (pages 8 - 24, Appendix Q). These studies do not support his position on touch DNA in the Bell case.

In his responses to the two studies[36] where he does offer detailed discussion are illogical and twisted. These two studies **do not support** Graveley's position on touch DNA in the Bell case despite Graveley's claims otherwise. I will show this in the detailed discussions that will follow.

I would not label Graveley's response related to the scientific literature he claims supports his position to be either vigorous or effective.

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[34] This is the Oldoni article. It is Article #3. This article was entered as Exhibit 214 in my response. I discuss Graveley's citation of this study in this response on pages 50-53.

[35] See my discussion regarding this article on pages 39-41 of this response.

[36] These two studies are Nunn, (2013) Exhibit 166; and Rock, et. al., 2016 Exhibit 165.

Paragraph 9; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 6:
Link to cited Beckman Exhibit 166.
Link to cited Beckman Grievance. Beckman labels this Appendix Q.
Link to the full September 27, 2017 letter cited in this paragraph.[37] (Exhibit 49)

> The first article in this category that Mr. Beckman references is by Samuel Nunn (see Beckman Exhibit 166). Mr. Beckman argues that because in this article "nearly 12%" of the cases provided profiles from touch DNA that had probative investigative value "these frequency percentages are far more than 'almost never'" (see Beckman Grievance p. 19-21). Two things are notable here. First, this article involves swabbing for touch DNA done on firearm's seized in Indianapolis, IN. From the article, we know nothing about how the touch DNA profiles that were developed were deposited on the firearms. Was the profile that was developed from a person who had contact with the firearm every day for a period of months or was the profile from a person who touched the firearm once for "an extremely limited period of time?" We don't know. Thus this article does not directly bear upon the factual circumstances I was addressing in my September 2017 letter. Second, it is true that the article indicates that 11.9% of cases produced touch DNA profiles that had "probative and investigative value." However, it was only actually in 2.5% of cases that there was a so-called DNA match between a suspect profile and the touch DNA profile recovered on a firearm. The other 9.4% of cases that were deemed to have had DNA results with "probative investigative value" came from a partial match between the profile from the firearm and the reference standard which means that the suspect could not be linked uniquely to the DNA sample, but could not be excluded as a possible contributor. Thus, in this study, actual DNA matches based on touch DNA recovered from a firearm and compared to a suspect profile occurred in 2.5% of cases—almost never.

Points addressed in this section:

- Beckman discusses the manner in which Graveley engages the Nunn study.
- Beckman discloses that the Nunn study has the lowest frequency percentage of all the studies he presented in his grievance and speculates that this is the reason why Graveley chose to engage it in his response.
- Beckman disputes, in detail, Graveley's contention that the Nunn study supports his position on touch DNA in the Bell case.
- Beckman also discusses Graveley's decision to respond to only two of the eleven studies Beckman presented in his Grievance.

Beckman Response:

First, very few educated people would consider a 2.5% frequency percentage to be "almost never."

[37] Mr. Bell's address was redacted from this letter to protect his privacy.

This is a screenshots of the definitions of “almost” and “never” from the Merriam-Webster on-line dictionary (https://www.merriam-webster.com)

almost adverb

Save Word

al·most | \ ˈȯl-ˌmōst, ȯl-ˈmōst \

Definition of *almost* (Entry 1 of 2)

: very nearly but not exactly or entirely
// We're *almost* there.
// The work is *almost* done.

almost adjective

Definition of *almost* (Entry 2 of 2)

: very near but not quite
// an *almost* failure

never adverb

Save Word

nev·er | \ ˈne-vər \

Definition of *never*

1 : not ever : at no time
// I *never* met her

2 : not in any degree : not under any condition
// *never* the wiser for his experience

Upon reading this paragraph of Graveley’s response, I realized that in my initial discussion of this study in my February 28, 2021 Grievance (pages 19-21, Appendix Q) I did not provide definitions of “probative value” and “investigative value.” My inclusion of these two terms would have provided additional clarity of my discussion of this study.

According to Black’s Law Dictionary “probative value” is defined as “Evidence has “probative value” if it tends to prove an issue.”[38] This same source has no definition of “Investigative value.” I checked various on-line legal dictionaries and found no legal definition of “Investigative value.” Thus, the common English definitions would be accurate.

[38] Black, H. C., MA, Nolan, J. R., Nolan-Haley, J. M., Connolly, M. J., Hicks, S. C., & Alibrandi, M. N. (1990). *Black's Law Dictionary* (6th Centennial Ed.) St. Paul, MN: West Publishing. Page 1203.

As Graveley correctly points out in the last half of his paragraph response, the Nunn article, page 603) reported that 11.9% of the firearms examined [in this study] had recoverable touch DNA that had "probative and investigative value." It is also true that of this 11.9%, 2.5% resulted in positive touch DNA matches. As indicated above, even 2.5% exceeds "almost never."

It is my position that from the standpoint of a criminal investigator or prosecutor that even those 11.9% of instances in which touch DNA matches that have probative or investigative value, are by definition, valuable.

It is important to note that of all eleven studies that I presented and discussed in my February 28, 2021 Grievance (Appendix Q), the Nunn study (Exhibit 166) is the study that has the lowest frequency percentage of positive matches for touch DNA. It is not surprising that Graveley chose to engage this study in his response.

Graveley also chose to address the Rock et. al. study (Exhibit 165) that follows this section. It is also not surprising that the Rock et. al. study has the second lowest frequency percentage of the eleven studies I cite in my February 28, 2021 Grievance. (Appendix Q) Other than two short phrases he disingenuously quotes from two other studies,[39] this is the extent of Graveley's discussion of the scientific literature that he claims supports his position of touch DNA in the Bell case.

It should be known that when I was performing the literature search for the February 28, 2021 Grievance, (Appendix Q) I was committed to being comprehensive and transparent. I knew the Nunn study had the lowest frequency percentage of the studies I cited. However, I chose to be both intellectually and ethically honest. Thus, I included it anyway.

In footnote #6, I wrote the following about my goals and manner in which I conducted this search.

Screenshot of footnote #6, February 28, 2021 Grievance. (page 9, Appendix Q)

[6] I used the holdings, including the holdings available for inter-library loan, of the Hedberg Library at Carthage College in Kenosha, WI, and "Google Scholar" in my search. I earned a Masters in Education from Carthage College in 2020 and retain library credentials. I do not claim that my search was exhaustive. However, I found no studies that support Graveley's position as he claimed exists. In the interest of finding the truth, others should replicate the search. Also, Graveley should be challenged to produce the literature that he claims supports his position.

[39] See my response Graveley's paragraph 11, pages 50-53 of this response..

I believe I must have done a decent job with this search. Graveley produced no studies that support his position. I believe he produces no studies because there are none to be found that support his position.

In this response paragraph Graveley also correctly states that there is no known handling history about the guns that were part of this study. The same is true of nearly all studies of this type that examines groups of guns from crime labs. I agree with Graveley's statement that this study does not bear directly on the factual circumstances he was addressing in the September 27, 2017 letter (Exhibit 49). This statement is true because we know exactly what the officers involved in the deadly encounter with Michael Bell allege to have occurred during the reported life and death struggle over Officer Strausbaugh's handgun.[40]

I allege that Graveley intentionally misrepresented the intensity of the reported struggle between Bell and Strausbaugh over Strausbaugh's handgun in the September 27, 2017 letter (Exhibit 49) (Detailed information regarding this struggle can be found in my response to Graveley's paragraph #5, pages 20-29.) Graveley then entered this deceptive and fraudulent document into the record of a John Doe Proceeding which increased the egregiousness of his misconduct.[41]

[40] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman's affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh's holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver's side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh's understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

[41] Later in this response, I will address Graveley's actions in submitting the September 27, 2017 letter (Exhibit 49) into the record of the John Doe proceeding that Mr. Bell filed with the Circuit court in 2018. I presented this information to the OLR as Addendum 2 (Appendix S) on April 6, 2021. Graveley does not address this anywhere in his April 29, 2021 response to my OLR grievance. I believe that Graveley did not address any issues related to his submission of the September 27, 2017 letter (Exhibit 49) into the John Doe record because the OLR never asked him to. I believe it is possible that the OLR never fully considered, nor acted upon the information in Addendum 2. (Appendix S) As indicated, I will address this in great detail later in my response.

Paragraph 10; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Pages 6-7:
Link to cited Beckman Exhibit 165.
Link to cited Beckman Grievance. Beckman labels this Appendix Q.

The second article in this category is by Karlee J. Rock, et al. (see Beckman Exhibit 165). In discussing this article, Mr. Beckman asserts that this article showed a 16% success rate (which, per the article, means that a case developed an investigative DNA profile from touch DNA from a firearm). Mr. Beckman then asserts that "once again this frequency percentage is far more than 'almost never'" (see Beckman Grievance p. 21-22). Just like with the Nunn article, we know nothing about how the touch DNA profiles that were developed on the firearms in this article were deposited. So, again, this article does not directly relate to the factual circumstances at issue. However, this article is particularly useful in showing the rarity of recovering a particular, probative DNA profile from touch DNA on a gun. In the prosecution of a criminal case, the question isn't whether **any** DNA profile is developed, but what is the probative value of the DNA profile that is developed. For example, in a stolen firearm case, finding the DNA profile of the owner on the firearm does not have probative value when what investigators are really looking for is the whether the DNA of the suspected

thief is on the firearm. In the Michael Bell case, the question is not whether **any** DNA profile is on Officer Strausbaugh's gun and holster, but whether Michael Bell's DNA profile is there. So, the question is not how frequently a lab might find any identifiable DNA profile from touch DNA on a firearm (in the Rock article 16%), but how frequently a lab finds an identifiable DNA profile from touch DNA on a firearm that actually has probative value in the case. In the Rock article, it appears that finding such evidence was actually quite unlikely. Only 4% of the DNA swabs in the Rock study were matched to a known suspect and only 4% were matched to a known victim. In 4% of the swabs a major contributor was determined. Another 2% resulted in the development of a partial profile and the final 2% resulted in a profile that was eligible for CODIS entry. The relevant number from the Rock article, then, is not 16%, but rather 4% if what is probative in the case at issue is a match of the identifiable DNA on the gun to the suspect.

Point addressed in this section:

- Beckman disputes, in detail, Graveley's disingenuous misrepresentaions of the Rock et. al. study.

Beckman Response:

Graveley engages in an impressive display of linguistic gymnastics in this paragraph of his response.

First, the Rock et. al. study clearly indicates, and Graveley actually concurs, that an investigative profile was developed in 16% of the firearms subjected to testing. (Rock et. al. page 18, Exhibit 165) That means that 16% of these firearms had touch DNA that could be positively linked to a known DNA profile.

Yes, it often occurs that DNA evidence is developed and the developed DNA evidence can not be linked to a "specific person" **only because that "specific person" is not known nor is that "specific person's" DNA in a law enforcement DNA database.** That does not, in any way, render the developed DNA profile useless.

For example, the touch DNA profile that the State Crime Lab analyst recovered from the doorknob in the Dalquavis Ward homicide case, using Graveley's logic, would have no value if Ward's DNA profile had not been in the law enforcement DNA database. (See pages 33-60 of the February 28, 2021 Grievance (Appendix Q) for full details.)

In fact, it is very possible that the homicide of which Ward was convicted would have remained unsolved if Ward's DNA profile was not in that law enforcement database. If Ward's DNA profile was not in the law enforcement database and later entered into the database at some point in the future, at that "some point in the future" then Ward could then be identified as the suspect in that homicide. This happens all the time and is indicative of the power of DNA evidence.

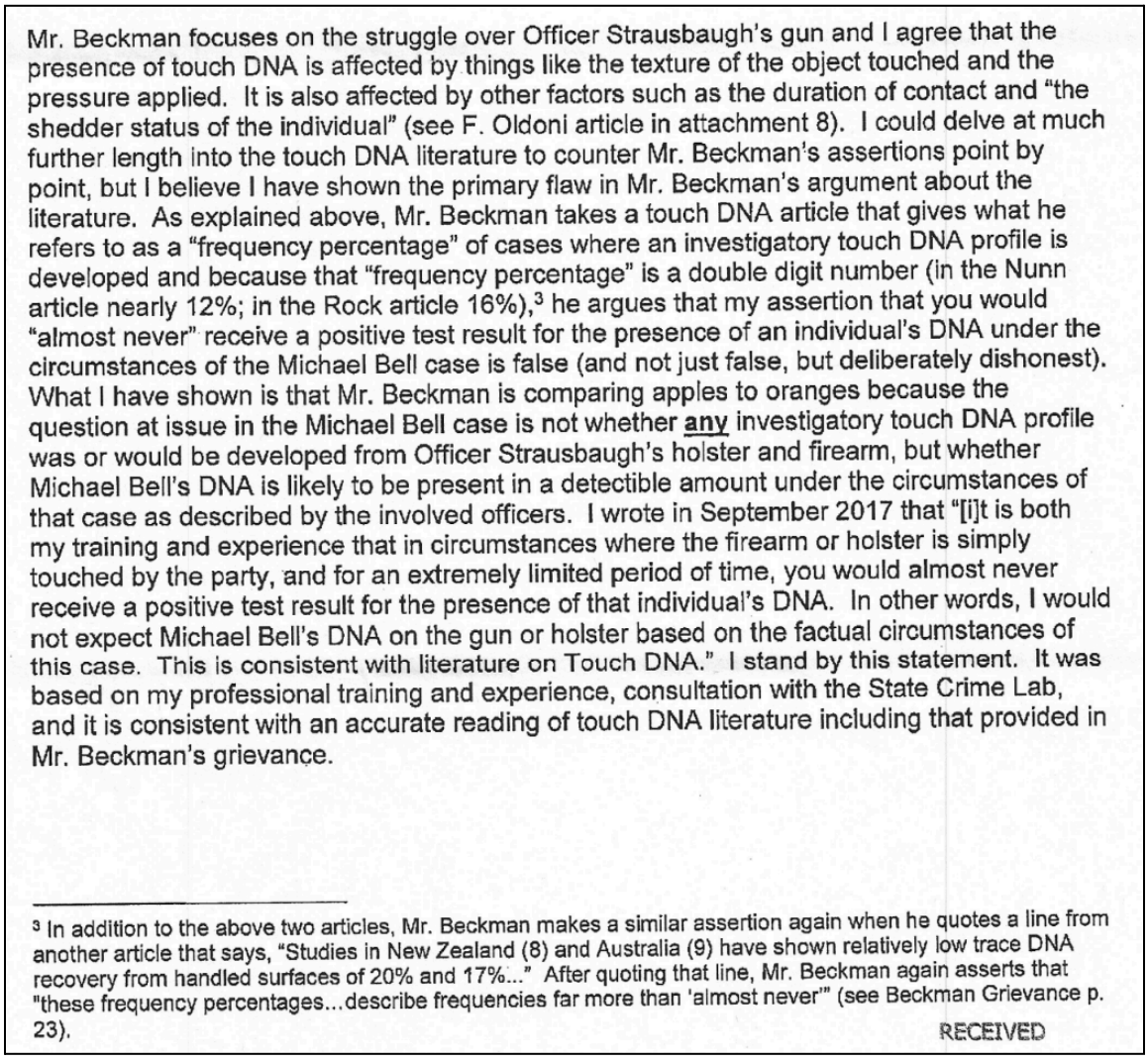
I am not sure how Graveley, with a straight face, can actually propose that only 4%, as opposed to 16%, is the actual number that matters. But even if someone buys into Graveley's intellectually dishonest proposal, 4% is much more than "almost never."

As he did in his response to the Nunn study in the previous paragraph, Graveley correctly asserts that in the Rock et. al. study the handling histories of the firearms that were subjects in this study are not known.

However, that fact has absolutely no relevance. As described in detail in a previous section of this response, pages 20-29, the officers' allegations related to the nature of the struggle between Bell and Strausbaugh over Strausbaugh's handgun are well established.[42]

[42] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman's affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh's holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver's side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh's understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

Paragraph 11; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 7: Footnote #3 is also included in this screenshot.
Link to cited attachment 8. (see pages 100 - 136 of this linked document, Exhibit 199.)
Link to the full September 27, 2017 letter which Graveley mentions in this paragraph.[43] (Exhibit 49)
Link to attachment 7. (see pages 95 - 99 this linked document, Exhibit 199.) Graveley indirectly refers to Attachment 7 in the first sentence of this paragraph. Attachment 7 is Officer Strausbaugh's written statement that was taken within hours of his encounter with Michael Bell in which Bell was killed.
Link to cited Beckman Grievance. Beckman labels this Appendix Q.
Link to cited Beckman Exhibit 162. (Cited by Graveley in footnote #3)
Link to the Graveley cited Oldoni study. (Exhibit 214)



Mr. Beckman focuses on the struggle over Officer Strausbaugh's gun and I agree that the presence of touch DNA is affected by things like the texture of the object touched and the pressure applied. It is also affected by other factors such as the duration of contact and "the shedder status of the individual" (see F. Oldoni article in attachment 8). I could delve at much further length into the touch DNA literature to counter Mr. Beckman's assertions point by point, but I believe I have shown the primary flaw in Mr. Beckman's argument about the literature. As explained above, Mr. Beckman takes a touch DNA article that gives what he refers to as a "frequency percentage" of cases where an investigatory touch DNA profile is developed and because that "frequency percentage" is a double digit number (in the Nunn article nearly 12%; in the Rock article 16%),[3] he argues that my assertion that you would "almost never" receive a positive test result for the presence of an individual's DNA under the circumstances of the Michael Bell case is false (and not just false, but deliberately dishonest). What I have shown is that Mr. Beckman is comparing apples to oranges because the question at issue in the Michael Bell case is not whether **any** investigatory touch DNA profile was or would be developed from Officer Strausbaugh's holster and firearm, but whether Michael Bell's DNA is likely to be present in a detectible amount under the circumstances of that case as described by the involved officers. I wrote in September 2017 that "[i]t is both my training and experience that in circumstances where the firearm or holster is simply touched by the party, and for an extremely limited period of time, you would almost never receive a positive test result for the presence of that individual's DNA. In other words, I would not expect Michael Bell's DNA on the gun or holster based on the factual circumstances of this case. This is consistent with literature on Touch DNA." I stand by this statement. It was based on my professional training and experience, consultation with the State Crime Lab, and it is consistent with an accurate reading of touch DNA literature including that provided in Mr. Beckman's grievance.

[3] In addition to the above two articles, Mr. Beckman makes a similar assertion again when he quotes a line from another article that says, "Studies in New Zealand (8) and Australia (9) have shown relatively low trace DNA recovery from handled surfaces of 20% and 17%..." After quoting that line, Mr. Beckman again asserts that "these frequency percentages...describe frequencies far more than 'almost never'" (see Beckman Grievance p. 23).

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[43] Mr. Bell's address was redacted from this letter to protect his privacy.

Points addressed in this section:

- Beckman discusses two points that Graveley writes about, without any elaboration or analysis, related to the Oldoni study.
- Beckman discusses Graveley's claim that he could delve into many studies that support his position on touch DNA in the Bell case. In this discussion, Beckman questions why Graveley does not actually do what he claims he could do and the potential ramifications of Graveley's refusal/failure to do so.
    - Beckman proposes that Graveley does not present these studies because he cannot. The studies do not exist.

Beckman Response:

Graveley reports that he agrees that the presence of touch DNA left on an object is affected by the texture of the surface of the object and the pressure of the applied touch. This is an important disclosure by Graveley since those two factors are clearly identified in the literature and DNA analyst Natalie Fischer's sworn testimony[44] as contributing to the likelihood of touch DNA being deposited on an object.

Graveley then continues by writing that the deposition of touch DNA onto an object is also affected by the "duration of contact"[45] and the "shedder status of the individual."[46] Graveley cites the F. Oldoni article[47] (Exhibit 214) as the source of both the "duration of contact study" and "shedder status" comment.

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[44] Ms. Fischer's testimony in the Martice Fuller homicide trial is described in detail in the March 26, 2021, Addendum 1 (Appendix R) to the February 28, 2021 Grievance and pages 67-69 of this response.

[45] I should also comment on the "duration of contact" comment that Graveley mentions without any elaboration. It is true that "duration of contact" is a factor that contributes to the likelihood of touch DNA contact from an individual to an object being touched. Graveley does mention that the Oldoni study deals with individuals sharing normal personal items-no firearms--for many minutes over the course of days. Pages 26-29 of this response addressed the length of time that Bell allegedly had his hand on Officer Straushbaugh's handgun. This is also never addressed anywhere in Graveley's April 29, 2021 response. I must ask, what purpose did it serve for Graveley to even bring up this "duration of contact" concept, from the Oldoni study, without any elaboration?

[46] I should also comment on the "Shedder status of the individual" that Graveley mentions without any elaboration. Other than say it has no relevance to this inquiry related to the Bell case, I will also not elaborate in any detail. I will say that we did not ever know nor will we ever know the "shedder status" of Michael Bell. I must ask, what purpose did it serve for Graveley to even bring it up?

[47] I offer a detailed discussion of the irrelevance of the Oldoni (Exhibit 214) study on pages 38 and 49 of this response.

Graveley does not provide any analysis or elaboration on these two factors. Instead he writes, “I could delve at much further length into the touch DNA literature to counter Mr. Beckman’s assertions point by point, . . .” .

A few thoughts about this statement: Graveley absolutely should actually do what he says he could do. After all, I made serious allegations to the OLR against Graveley. I believe my allegations are accurate and very well documented. If Graveley can actually debunk most of my allegations by simply providing this point by point attack on my assertions, it is certainly in his interest to do so. Why would he allow his professional reputation to be damaged by potential disciplinary action the OLR could impose? It is a big risk that he is taking by not engaging the literature that he claims would counter my assertions and presumably show that he was honest when he wrote, in the September 27, 2017 letter (Exhibit 49) that his position touch DNA in the Bell case “. . .is consistent with the literature on touch DNA.”

As adherents to slang would say, “Come on, Mr. Graveley, show us the money!” Graveley should back up words with verifiable facts! Merely saying something is so, does not make it so.

Graveley is an experienced prosecutor, actually a good one. He, more than almost everyone, knows that you get guilty verdicts from juries by actually backing up the claims you make in opening arguments with evidence. Why is Graveley refusing to do this in this case? It should not be an arduous task. After all, if his claim that “This is consistent with the literature on touch DNA” is true, he would already have a bibliography of this literature.

Could it be that Graveley does not do this because he can not? Graveley must know that the literature really does not support his position. The evidence shows Graveley just made up the statement he wrote in the September 27, 2017 letter (Exhibit 49) that his position on touch DNA in the Bell case “. . .is consistent with the literature on touch DNA.”

Obviously, that is exactly what I think he did.

Graveley continues by writing that I give a frequency percentage to both the Nunn and Rock et. al. studies and because these percentages were double digit numbers, I claimed these percentages are more than “almost never.” Well, **these percentages <u>are</u> more than “almost never.”** Those are facts. Also it should be noted that these frequency percentages were determined by the researchers, not me.

Graveley writes the following about what I wrote in my February 28, 2021 Grievance:

". . .[Beckman] argues that my [Graveley's] assertion that you would "almost never" receive a positive test result for the presence of an individual's DNA under the circumstances of the Michael Bell case is false (not just false, but deliberately dishonest)."

Yes, that is exactly what I allege and believe is supported by the evidence. However, I also allege that Graveley intentionally misrepresents and minimizes the intensity of the alleged struggle between Bell and Officer Strausbaugh to try to fit Graveley's false claim, in the September 27, 2017 letter, (Exhibit 49) that Bell ". . .simply touched [Strausbaugh's gun and holster] for an extremely limited period of time. . .".

Graveley continues by writing that he has shown that I ". . .am comparing apples to oranges because the issue at question in the Michael Bell case is not whether **any** investigatory touch DNA profile was or would be developed from Officer Strausbaugh's holster and firearm, but whether Michael Bell's DNA is likely be present in a detectable amount under the circumstances of that case as described by the involved officers."

I am not sure what point Graveley is attempting to make. Bell's DNA is certainly part of the set of "**any**" DNA. Further, yes, it is clear that in the alleged circumstances of the Bell case, as **actually described by the involved officers**,[48] almost certainly would have resulted in Bell's touch DNA being deposited on Officer Strausbaugh's handgun. That is my claim. I backed it up by a great deal of evidence and scientific studies. Unlike Graveley's claims, no one needs to simply believe it is so merely because I say it is so.

Graveley then continues by affirming that what he wrote in the in the September 27, 2017 letter (Exhibit 49) is true; is consistent with the literature on touch DNA and an accurate reading of that literature; is based on his training and experience; is supported by his consultation with the State Crime Lab, and he stands by this statement.

As I previously indicated, merely saying it is so, does not make it so, even for a sitting District Attorney. I offer this suggestion to Graveley, don't just tell us it is so, present evidence that it is so. Graveley failed to do so. I propose it is because Graveley can not.

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[48] The private Bell investigative team vehemently rejects the official account that Michael Bell was attempting to disarm Officer Strausbaugh during the fatal encounter. Instead, as theorized in Beckman's affidavit based partly on the lack of fingerprint and DNA evidence (Exhibit 3), Strausbaugh's holstered handgun--unbeknownst to Stausbaugh during the struggle--hooked on the driver's side mirror. It is highly likely Strausbaugh mistook what he felt was an attempt to disarm him instead was caused by the holster hanging up on the mirror with such force that the mirror assembly broke in the process. In response to Strausbaugh's understandable but mistaken fears, and crying that Bell had his gun, Lt. Kreuger and Officer Gonzales responded with deadly force.

Paragraph 12; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 8:
Link to cited Beckman grievance related to Dalquavis Ward case. Pages 33 - 56.
Beckman labels this Appendix Q.

Dalquavis Ward Case, Martice Fuller Case, and Assertions of Inconsistency

On June 17, 2019, Dalquavis Ward murdered John Hetland who was an Officer with the Racine Police Department. Ward shot and killed Hetland when Hetland attempted to stop Ward from committing an armed robbery of Teezer's Bar in Racine. By some twisted logic, Mr. Beckman is attempting to use my prosecution of that case to argue that my professional conclusion as stated in the September 2017 letter is a lie. The Ward case at no time considers DNA on a firearm. In fact, the firearm at issue was never recovered. The homicide case against Dalquavis Ward was unique. It is not often that members of the Crime Lab respond to a crime scene themselves to process evidence. It is also not often that video surveillance enables the people collecting evidence to direct their collection efforts to areas that we know for sure the perpetrator touched. The DNA evidence in the Ward case was collected under absolutely pristine conditions, almost exclusively indoors, by the foremost DNA experts in the entire State.

Point addressed in this section:

- Beckman disputes Graveley's claim of the lack of relevance between his actions in the Dalquavis Ward murder case and Graveley's position of touch DNA in the Bell case.

Beckman Response:

I only offer the following in my response to this paragraph:

Screenshot of footnote #5, February 28th Grievance, page 8 Appendix Q:
(Link to Criminal Complaint Exhibit 152.)

[5] New information (documented January 30, 2021) will be presented later in this appendix related to Graveley's involvement in the homicide prosecution of Dalquavis Ward and the critical touch DNA evidence in this case that was discovered on a door knob by a Wisconsin State Crime Lab Analyst. The Criminal Complaint (Exhibit 152) for this case has the following sentence on page 2: "As the defendant reaches the back (west) side of the business he attempts to open a door marked as "Private" which is locked by grasping the door knob with his bare hand." The analyst saw the defendant grasp the door knob as she reviewed surveillance video from the scene. How could it happen that touch DNA would be left on a door knob by someone merely grasping it while no touch DNA was left on a handgun during a fierce physical struggle over this weapon? According to the official account, Michael Bell allegedly attempted to forcibly disarm Officer Strausbaugh. This allegedly resulted in a life-and-death struggle from Strausbaugh's handgun that required the officers to shoot and kill Bell to save their lives. So, are we to believe that such a fierce struggle between Bell and Officer Strausbaugh over his gun would result in none of Bell's touch DNA being left on the gun, while merely grasping a door knob results in the suspect leaving touch DNA that results in him being convicted of murder:? The answer is clearly that we can not believe the former, but we can believe the latter. The lack of Bell's touch DNA on Strausbaugh's handgun is powerful evidence that supports the Bell investigative team's belief that Bell was not attempting to disarm Strausbaugh when Bell was shot.

Paragraph 13; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 8:

> I summarize Mr. Beckman's argument as follows: If you render an opinion that a type of evidence is very rare, you are then a liar, engaged in actual attorney misconduct if you ever use such evidence on future occasions where that evidence does arise. By way of analogy, I would also offer the professional opinion that based on my decades of experience as a prosecutor, sexual assaults are almost never perpetrated against victims who are strangers in public places. Nevertheless, in March and May of 2018, Reginaldo Etienne sexually assaulted two women who were strangers to him on the Kenosha County Bike Trail. Just because the nature of these sexual assaults was so unusual, and counter to my above-stated professional opinion, it would be inexplicable to argue based on the Etienne offenses that my original opinion was a lie and misconduct.

Points addressed in this section:

- Beckman discusses, in detail, Graveley's use of an analogy in his response that appears to be false.
- Beckman proposes that Graveley's use of this false analogy is indicative of his willingness to engage in misrepresentation in his work as a prosecutor.
    - Beckman cites government reports and records, media sources, and an academic study on sex offenders in his analysis.

Beckman Response:

First, I will address the last sentence of Graveley's paragraph.
Graveley is absolutely correct. Graveley's holding or even communicating a professional opinion about the frequency of such a crime scenario only to have a crime(s) occur that are contrary to his opinion would not be a lie or misconduct. If his original professional opinion was incorrect, it would only be an opportunity to learn and grow professionally. As a professional in a very important position, he should be committed to both of those things.

However, the analogy that Graveley presents in this paragraph has absolutely no relevance to the misconduct I allege Graveley committed when he published the September 27, 2017 letter. (Exhibit 49) This is so because in the analogy Graveley presents, the scenario he describes in this paragraph, it is assumed that he did not fabricate case facts; falsely document interactions and communications with other government employees; make claims that his opinion is supported by the scientific literature when it is not; and then put these fraudulent statements into a letter, that he then presents to a private citizen, AND THEN, submit this fraudulent document into the

court record to be reviewed by a Circuit Court Judge who is is using that record to rule on a John Doe Petition.[49]

No, to be clear, I assume Graveley did none of those things in the scenario he presents in this paragraph. However, I allege, and believe that I presented compelling evidence, that he actually did all those things in the manner in which he drafted, published, and disseminated the September 27, 2017 letter. (Exhibit 49)

I could stop my response to this paragraph right here. However, I cannot refrain from providing further analysis of the information Graveley presents in this paragraph.

When I read this paragraph, I was struck by this sentence that Graveley wrote:

". . .sexual assaults are **almost never** perpetrated against victims who are strangers in public places." (bolding added)

I know this to not be so.

I served more than thirty years as a sworn law enforcement officer. Twenty-nine of those years were with the Kenosha Police Department. I served as a Kenosha police detective for more than eighteen of those years. My first assignment as a detective was to investigate sexual assaults and child abuse. I served in this role for close to four years before I transferred to general assignments..

Graveley spent nearly all of his long career as a prosecutor with the Kenosha County District Attorney's Office. In fact, he successfully prosecuted many cases that both I and my co-workers submitted. We share some common professional experience. He, as a prosecutor. Me, as an investigator.

I considered Graveley's statement and his use of the words, "almost never" to be incorrect and factually false. My belief that Graveley is wrong is due to my direct experience in investigating dozens, possibly hundreds of sexual assaults in Kenosha; the many dozens more sexual assault cases in which I assisted other detectives; the knowledge and experience I developed by attending the Wisconsin Department of

[49] Later in this response, I will address Graveley's actions in submitting the September 27, 2017 letter (Exhibit 49) into the record of the John Doe proceeding that Mr. Bell filed with the Circuit court in 2018. I presented this information to the OLR as Addendum 2 (Appendix S) on April 6, 2021. Graveley does not address this anywhere in his April 29, 2021 response to my OLR grievance. I believe that Graveley did not address any issues related to his submission of the September 27, 2017 letter (Exhibit 49) into the John Doe record because the OLR never asked him to. I believe it is possible that the OLR never fully considered, nor acted upon the information in Addendum 2. (Appendix S) As indicated, I will address this in great detail later in my response.

Justice Death Investigation School and the actual experience of either directly investigating or assisting in the investigation of possibly hundreds of deaths; and my intelectual curiousity that causes me to stay current with the best practices and trends in the field in which I worked. (I considered this to be an important professional responsibility.)

I found it odd that Graveley cited his own experience as a prosecutor in Kenosha County in making this claim. Is his experience that different from mine, despite the fact that we worked in the same county for nearly our entire careers?

I remember many cases of stranger sexual assaults in public places in Kenosha. There were enough in my career for me to consider Graveley's use of the term "almost never" to be another example of what I believe is his tendency to state "facts", in official documents, that are not really facts. This is exactly what I allege he did with the September 27, 2017 letter. (Exhibit 49)

This section of my response was completed prior to May 20, 2021. However, on that date, I read an article in the on-line edition of the Racine Journal Times. This article (Exhibit 209) described a Racine man who was charged with two stranger sexual assaults that occured in public in the City of Kenosha in 2014 and 2015. This article (Exhibit 209) also described that this suspect's DNA matched two other similar sexual assaults that happened in Racine in the recent past.

According to the article, (Exhibit 209) the man charged with these two Kenosha County sexual assaults was identified through "familial DNA" analysis. This relatively new technique involves identifying a suspect through his relatives. The article (Exhibit 209) states that agents from the Wisconsin Department of Justice ". . .used data from a genealogical service to link DNA evidence from backlogged rape kits to identify a Racine man as a suspect in four previously unsolved rape cases in Kenosha and Racine counties."

The next paragraph of the article (Exhibit 209, page 2.) continues:

> *"Matthew P. Crockett, 46, of Racine, was charged Thursday in Kenosha County Circuit Court for two sexual assaults that occurred in Kenosha in 2014 and 2015. In each of those cases, which Kenosha County District Attorney Michael Graveley characterized as "true nightmares," the women said they were walking alone when they were snatched from the street by a stranger, pulled into a vehicle and raped."*

These cases are further evidence that what Graveley wrote in paragraph 13 that such crimes “almost never” happen is false. We will look into this in more depth. I believe this detailed analysis will show that Graveley’s “almost never” analogy in this paragraph is a calculated and intentional false statement specifically directed at the OLR to convince them to drop the Grievance that I filed against him.

Based upon my professional experience as a long time detective with the Kenosha Police Department, I am confident that Graveley knew the State Department of Justice was working on the Crockett cases for quite a while and that his office would be asked to prosecute the specific Crockett cases and other similar cases involving other perpetrators. (It is certainly possible for an OLR investigator to directly ask Graveley this question and to provide evidence that supports his response.).

That is how it works. No agency is going to invest scarce investigative resources into cases that a district attorney will not prosecute. Because of that concern, there is significant communication and collaboration between competent law enforcement agencies and prosecutors throughout the investigative process.

Exhibit 210 is the May 20, 2021 criminal complaint in this case. Graveley electronically signed this Criminal Complaint as the “Complainant.” (This Criminal Complaint was filed with the Court less than three weeks after Graveley filed his April 29, 2021 response to the February 28, 2021 OLR I filed against him.)

Sure enough, the Criminal Complaint (Exhibit 210) has evidence that shows that state agents collaborated with Graveley and Graveley knew these case were in the investigative pipeline before April 29, 2021, when Graveley submitted his response to the OLR when he stated that sexual assaults such as this “almost never” happen.

This is a screenshot from page 3 of Exhibit 210:

> Your complainant is aware that in the months preceding 2018, the Wisconsin Department of Justice conducted a major operation where sexual assault kits and sexual assault evidence still in the possession of police departments were collected and tested by the Wisconsin State Crime Lab to see if any cold cases could be developed into identifiable suspects. Both of the aforementioned cases were reviewed by the Wisconsin Department of Justice SAKI Case Review Team, pursuant to this initiative and Agent Mitchell Ward indicates that a report was prepared by the Wisconsin State Crime Lab indicating that four sexual assault cases were all linked together by the same offender DNA profile. Two of those cases were the aforementioned cases outlined above. Two others were in the City of Racine, and were cases alleged to have occurred in March 2014 and October 2017. Agent Ward indicates that although the Wisconsin State Crime Lab indicated that all four of the cases were linked by the same offender DNA profile, that that profile was not matched as there was no matching profile in the CODIS database. Agent Ward indicates that the Wisconsin Department of Justice continued to try to explore all investigative avenues and it was finally determined that this case was suitable for further DNA analysis. Agent Ward indicates that DCI Agent Neil McGrath was asked to assist in the carrying out of a familial DNA search to attempt to identify a suspect. Agent Ward indicates that genetic material recovered from these four cases was then tested by an outside laboratory that specializes in genealogical DNA searches and that that lab was the Gene By Gene Laboratory in Houston, Texas.

The four Crockett cases and the two Reginaldo Etienne cases that Graveley himself presented are six examples of the phenomenon of stranger sexuals that occurred in public places of which Graveley was aware when he wrote in his April 29, 2021 response that such cases "almost never" happen. These six cases, all from Kenosha and Racine counties, occurred from 2014 to 2018. I would argue that the frequency of this phenomenon is greater than "almost never." These are only the cases of this type that we can basically prove Graveley actually knew about. Based on my professional experience, I believe it is very likely, maybe even almost certain, that Graveley is personally aware of many more stranger sexual assaults that happened in public places.

On May 20, 2021 the on-line edition of the Milwaukee Journal Sentinel published another article about the Crockett case. (Exhibit 211) This article has the following statement from Graveley on page 3. I believe this is further evidence that Graveley collaborates with the Wisconsin of Justice about these types of cases and is actually aware that these types of cases occur at a rate of more than "almost never."

Screenshot of part of page 3 of Exhibit 211:

> But many authorities have begun to go back and catch up testing of old kits to find possible suspects.
>
> "This outcome is exactly what local prosecutors were hoping for when the attorney general and the DOJ redoubled the efforts to get all remaining cold-case sexual assault evidence tested a few years ago," said Kenosha County District Attorney Michael Graveley.
>
> "Based on the allegation in this complaint, Kenosha is tangibly safer today because of these efforts," he said.
>
> Graveley and Attorney General Josh Kaul announced the charges, crediting the many local, state and federal agencies that worked together.

What does the literature say?

Graveley claimed the literature supported his claim, in the September 27, 2017 letter (Exhibit 49) that ". . .where a firearm or holster was simply touched [Strausbaugh's gun and holster] for an extremely limited period of time, you would **almost never** receive a positive test result for that individual's DNA." (bolding added) As indicated, I believe his

claim was not supported by the literature. What about his new "stranger sexual assault in public place "almost never" happens" claim? Let us examine that.

I did a small amount of research regarding the claims I am making in this response. I believe Graveley should have had the wisdom to do the same before he wrote the sentence ". . .sexual assaults are **almost never** perpetrated against victims who are strangers in public places." (bolding added) in his April 29, 2021 response to my OLR grievance. Had he done even a little research, he may have decided not to write this paragraph and submit it to the OLR.

Within minutes I found a government report[50] (Exhibit 207) from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

This is a screenshot of a table from page 2 of the report. The red circles I added to the screenshot show the data that from 1993 through 2010, sexual assaults committed by strangers in the United States ranged from 23.7% to 26.1%. These figures are consistent with both my professional experience and training when I worked as a police detective in Kenosha before I retired.

TABLE 1

Violent victimization committed by strangers, by type of crime, 1993–1998, 1999–2004, and 2005–2010

	Average annual percent		
Type of crime	1993–1998	1999–2004	2005–2010
Total violent crime	45.4%	42.1%	39.2%
Serious violent crime	52.0%	47.5%	42.9%
Rape/sexual assault	23.7	26.1	24.1
Robbery	63.9	56.5	51.7
Aggravated assault	52.0	48.7	42.3
Simple assault	42.1%	39.5%	37.3%

Note: Violent victimization includes rape, sexual assault, robbery, aggravated assault, and simple assault. See appendix table 2 for standard errors.

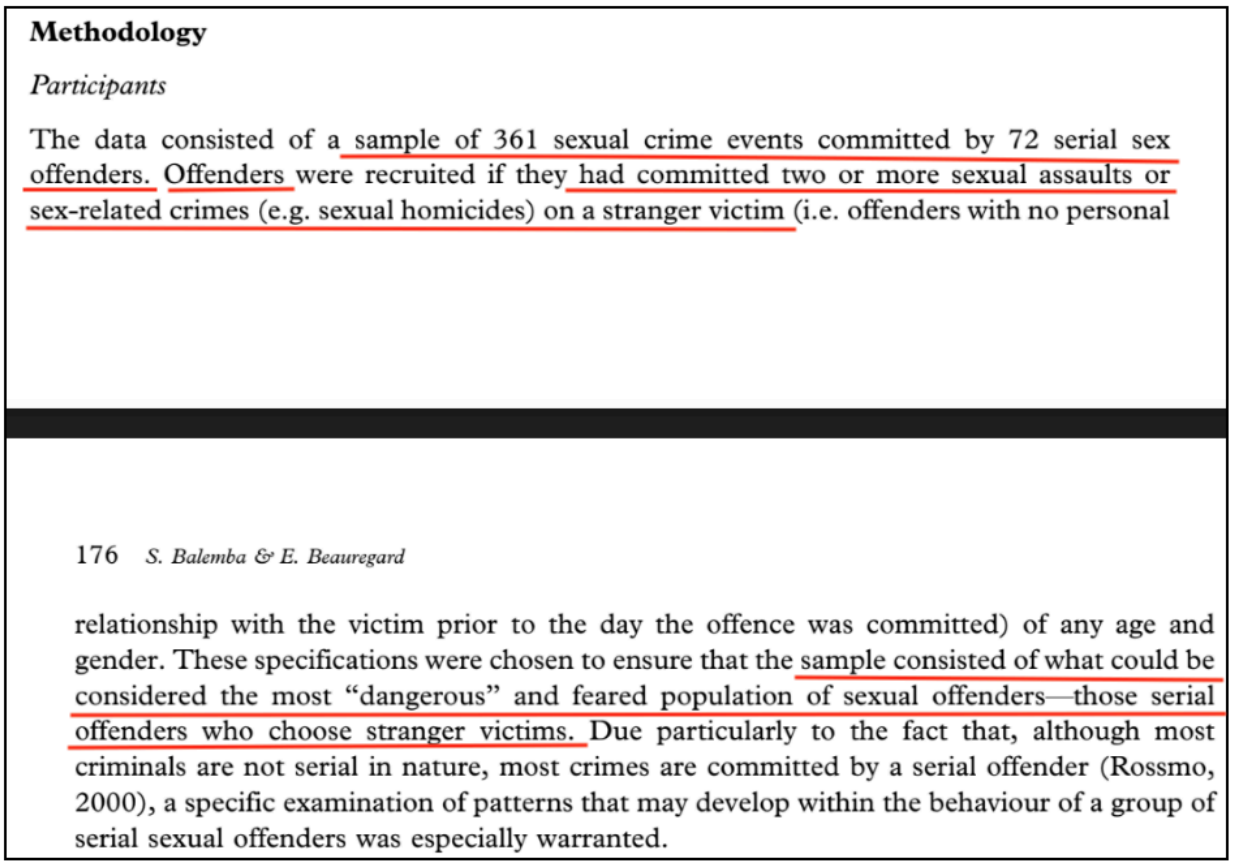
Source: Bureau of Justice Statistics, National Crime Victimization Survey, 1993–2010.

However, I did not stop my research after finding this study. Graveley's statement includes that these "almost never" stranger sexual assaults happen in "public places." I was confident I would find data that would confirm that Graveley's statement is wrong.

[50] Harrell, E. (2012). *Violent victimization committed by strangers, 1993-2010*. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved on May, 17, 2021 from: https://www.bjs.gov/content/pub/pdf/vvcs9310.pdf

I found no data regarding the frequency of stranger sexual assaults in "public places" in published government reports. I then looked to peer reviewed academic studies. I quickly for a 2012 study[51] (Exhibit 208) of 361 sexual crime events committed by 72 serial sex offenders.

This is a screenshot of the "Methodology" portion of the study that describes the study participants: (Exhibit 208, pages 6 - 7)[52] Please note that I added the red underscoring in this screenshot.



Methodology

Participants

The data consisted of a sample of 361 sexual crime events committed by 72 serial sex offenders. Offenders were recruited if they had committed two or more sexual assaults or sex-related crimes (e.g. sexual homicides) on a stranger victim (i.e. offenders with no personal

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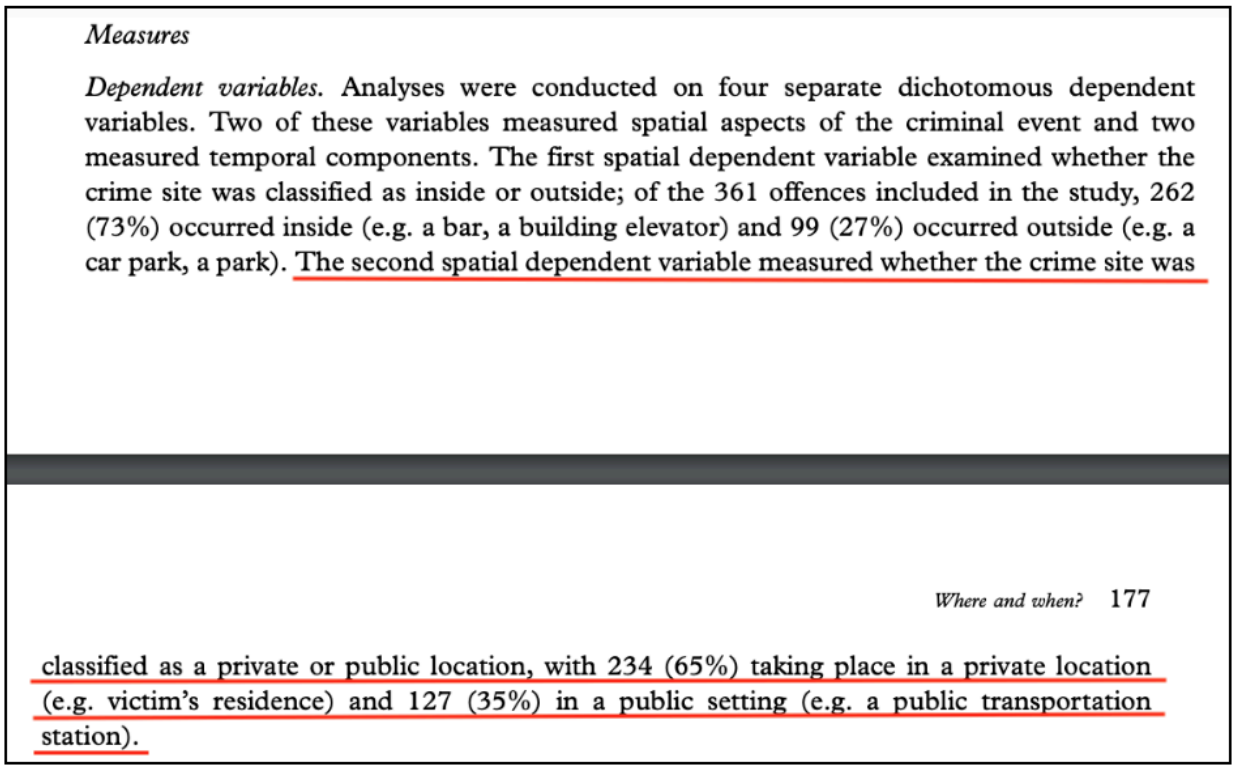
relationship with the victim prior to the day the offence was committed) of any age and gender. These specifications were chosen to ensure that the sample consisted of what could be considered the most "dangerous" and feared population of sexual offenders—those serial offenders who choose stranger victims. Due particularly to the fact that, although most criminals are not serial in nature, most crimes are committed by a serial offender (Rossmo, 2000), a specific examination of patterns that may develop within the behaviour of a group of serial sexual offenders was especially warranted.

This is a screenshot of the "Measures" portion of the study that describes the four dependent variables. Two of these dependent variables measured spatial aspects of the criminal event (sexual assault). Two measured temporal components of the sexual assault. The second of the two described spatial dependent variables indicate that **65%**

[51] Balemba, S., & Beauregard, E. (2013). Where and when? Examining spatiotemporal aspects of sexual assault events. *Journal of sexual aggression*, *19*(2), 171-190. Retrieved from https://www.researchgate.net/profile/Samantha-Balemba/publication/254249445_Where_and_when_Examining_spatiotemporal_aspects_of_sexual_assault_events/links/54b00b1c0cf220c63ccdd894/Where-and-when-Examining-spatiotemporal-aspects-of-sexual-assault-events.pdf

[52] The published report page numbers are 175 - 176.

of the stranger sexual assaults committed by the study participants were committed in a private location, while 35% were committed in a public location. (Please note that I added the red underscoring in this screenshot.) (Exhibit 208, pages 7 - 8)[53]



Measures

Dependent variables. Analyses were conducted on four separate dichotomous dependent variables. Two of these variables measured spatial aspects of the criminal event and two measured temporal components. The first spatial dependent variable examined whether the crime site was classified as inside or outside; of the 361 offences included in the study, 262 (73%) occurred inside (e.g. a bar, a building elevator) and 99 (27%) occurred outside (e.g. a car park, a park). The second spatial dependent variable measured whether the crime site was

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classified as a private or public location, with 234 (65%) taking place in a private location (e.g. victim's residence) and 127 (35%) in a public setting (e.g. a public transportation station).

This is a screenshot of a graphic organizer that illustrates some of the findings of the study: (Exhibit 208, page 12)[54] I added the blue circle that highlights the previously described dependent variables that indicate that 65% of the stranger sexual assaults committed by the study participants were committed in a private location while 35% were committed in a public location.

Screenshot on next page. . .

[53] The published report page numbers are 176 - 177.
[54] The published report page number is 181.

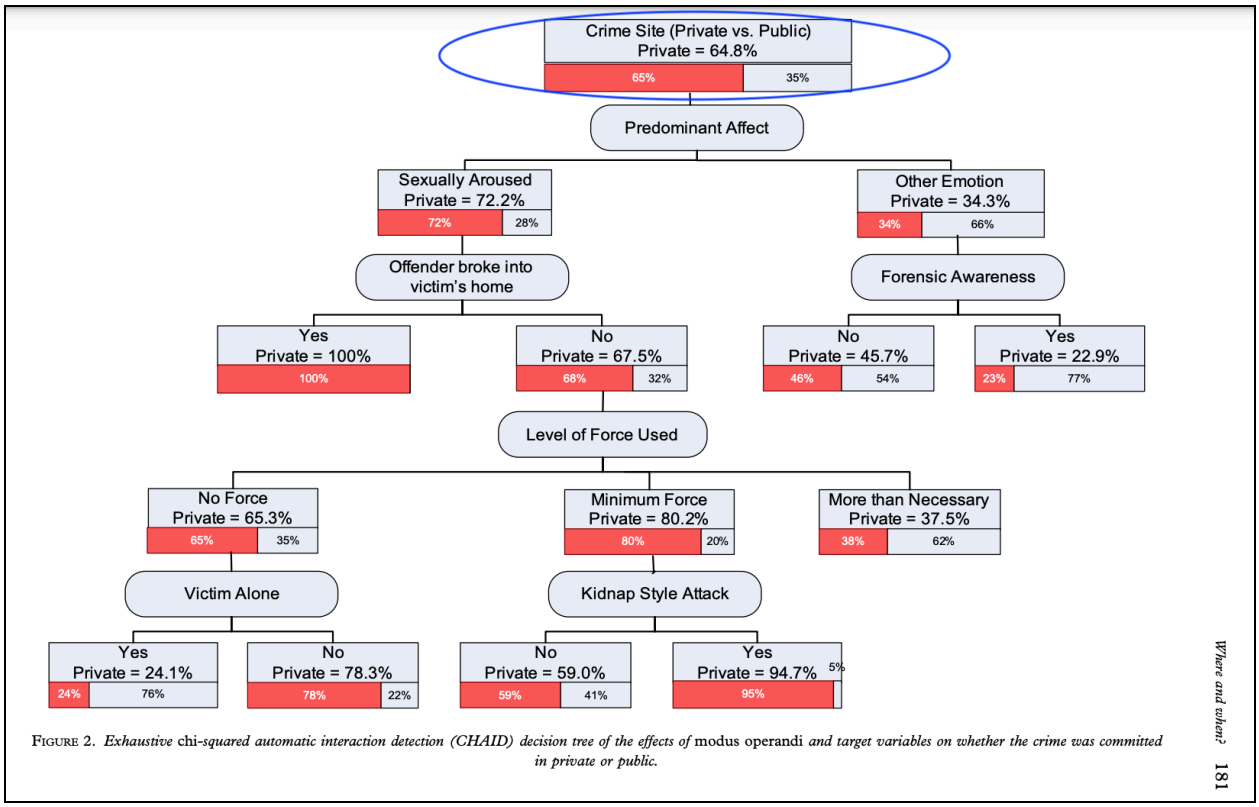

FIGURE 2. *Exhaustive* chi-*squared automatic interaction detection (CHAID) decision tree of the effects of* modus operandi *and target variables on whether the crime was committed in private or public.*

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The findings of this study that 35% of stranger sexual assaults occur in a public place is consistent with both my professional experience and training when I worked as a police detective in Kenosha before I retired.

This was the first study that I found in a very abbreviated literature search. I stopped after I found this study. I did not conduct a full literature search. However, I am confident if I did, I would find other studies consistent with this study's findings. However, I also suspect that few studies actually exist that specifically deal with this question. In fact, the very first sentence of the introduction of this study states, "Most studies examining the offending patterns of sex offenders have neglected to consider their spatiotemporal characteristics." (Exhibit 208, page 2)

According to the May 20, 2021 on-line edition of the Milwaukee Journal Sentinel article was published about the Crockett case (Exhibit 211) in 2015, there were 70,000 untested "rape kits" nationally in 2015, and 6,000 untested kits in Wisconsin.

Screenshot of part of page 3 of Exhibit 211:

> Backlogged rape kits have been a problem over recent years, lying around in hospitals and police evidence rooms without ever getting to crime labs for processing. A July 2015 USA TODAY Network investigation revealed that 70,000 rape kits were untested nationally. In Wisconsin, the figure was about 6,000.

By definition, nearly all of these untested kits are from unsolved cases of stranger sexual assaults. If one uses the frequency rate of stranger sexual assaults in public places of 35% as established in the previously discussed Balemba and Beauregard study (Exhibit 208) one can reasonably infer that in 2015, there were about 2,000 unsolved "stranger sexual assaults that occurred in a public location" cases in Wisconsin. (6,000 x .35 = 2,100.) Clearly, these types of sexual assault cases happen more than "almost never", despite what Graveley claimed in his April 29, 2021 response to my February 28, 2021 OLR grievance.

According to the Wisconsin Department of Health and Human Services, in 2014, Wisconsin's total population was 5,747,958.[55] That same year, the total population of Kenosha County was 167,604,[56] or 2.9% of Wisconsin's total population.[57] By completing the math,[58] one can reasonably state that Kenosha County in 2015 has at least 61 unsolved "reported"[59] stranger sexual assaults in a public place Kenosha County since the start of the collection of "rape kits" in Wisconsin.[60]

Wow! Graveley wrote that such crimes "almost never" occur.

There is a remarkable difference between what Graveley wrote about the frequency of this phenomenon compared to what both the literature, my professional experience and

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[55] Retrieved from the following website on May 22, 2021:
https://www.dhs.wisconsin.gov/population/wisconsin2014.pdf

[56] Retrieved from the following website on May 22, 2021:
https://www.dhs.wisconsin.gov/population/kenosha2014.pdf

[57] 167,604 / 5,747,958 = 0.029158

[58] 2,100 x 0.029158 = 61.231

[59] According to a 2014 report by the US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, it is estimated that only 34.8% of all sexual assaults in the United States are reported. (Page 7) Retrieved from the following website on on May 22, 2021:
https://www.bjs.gov/content/pub/pdf/cv13.pdf

[60] Based upon my experience as an police officer with the city of Kenosha, "rape kits" were collected from sexual assault victims in the late 1980's.

training indicate the frequency actually is, and what a basic look at government statistics would indicate.

I believe that Graveley is a skilled and competent prosecutor. My issue with him is what I believe to be his unethical conduct in the manner in which he handled the Bell case, as manifested in his drafting, publishing, and dissemination of the September 27, 2017 letter that is the subject of this grievance. To be clear, I believe that Graveley actually knows how ridiculous and untrue of both his claims are:

- ". . .where a firearm or holster was simply touched [Strausbaugh's gun and holster] for an extremely limited period of time, you would **almost never** receive a positive test result for that individual's DNA."[61] (bolding added)

- ". . .sexual assaults are **almost never** perpetrated against victims who are strangers in public places." (bolding added)

Why then, does Graveley submit these ridiculously untrue statements in his official writings, even one that he submitted in an important response to a grievance filed with the OLR?

I can only speculate. My speculations include: a lack of respect for the process; arrogance that causes him to believe no matter what he writes in his response he will not be held accountable; the belief that due to the power of his office, no one will question what he writes; maybe simply carelessness due to an over inflated personal opinion of his knowledge; or maybe a calculated attempt to falsely persuade the OLR to dismiss my complaint.

No one can read his mind. However, both statements are eerily similar. I doubt that is mere coincidence.

I pray the Office of Lawyer Regulation sees the significance of what Graveley wrote in this paragraph, provides it with the appropriate weight, and uses it as part of the basis in a decision to allow my grievance to proceed..

[61] As reported in several places in this response and multiple places in the February 28, 2021 Grievance and subsequent addendums, Graveley intentionally misrepresents the alleged intensity of the struggle between Bell and Officer Strausbaugh over Strausbaugh's handgun.

Paragraph 14; Graveley's April 29, 2021 response to OLR Grievance Exhibit 195, Page 8:

> I am an avid baseball fan. I would offer you the opinion that it is rare for a pitcher to throw a no hitter. Each time a no hitter is thrown, am I exposed as a liar? The existence of the Ward case does not cause me to change my general opinion regarding the likelihood of DNA evidence being present in a different factual situation (like that presented in the Michael Bell officer involved shooting); just as the existence of the Etienne case does not cause me to change my general opinion regarding the circumstances of the vast majority of sexual assault cases.

Points addressed in this section:

- Beckman discusses Graveley use of the word "rare" in this analogy as opposed to the words "almost never."
- Beckman argues that this analogy is completely irrelevant to the issue of Graveley's position on touch DNA in the Bell case.

Beckman Response:

My response to Paragraph 13 should be incorporated into my response to this paragraph.

The answer to Graveley's question is no, he would not be exposed as a liar. That assumes he does not do any of the things that would constitute misconduct as I previously described in my response to his paragraph 13. I will not repeat those potential illicit acts here.

I find it interesting that Graveley uses the term "rare" in this analogy as opposed to the words "almost never" that he used in the September 27, 2017 letter. (Exhibit 49) Graveley's use of the word "rare" in this analogy makes it fit his argument better. The two adjectives have two somewhat different meanings.

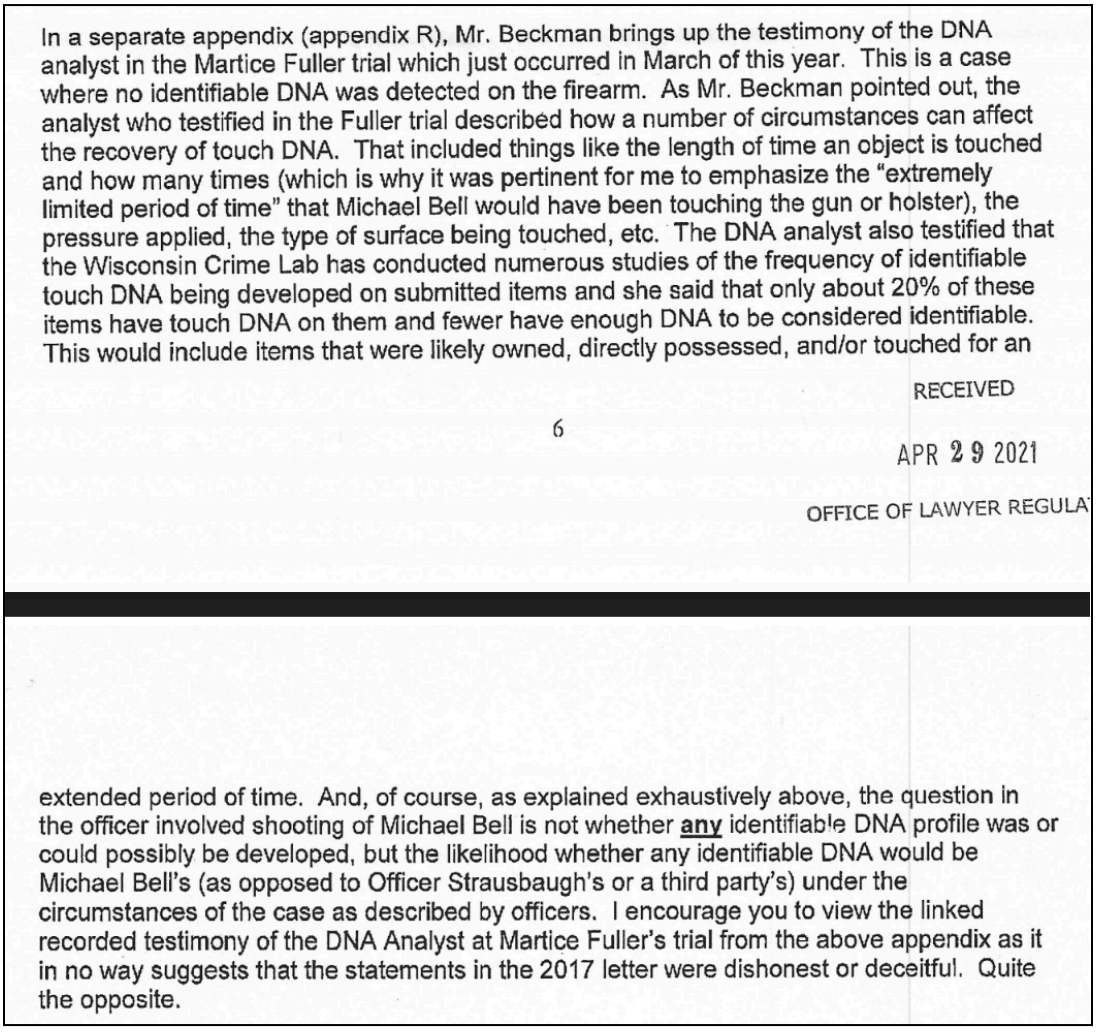
I agree, and most other people would likely agree: "no-hitters are rare." I also believe that significantly less people would agree that no-hitters "almost never" happen. If the words mean the same thing, why didn't Graveley use the same words he published the September 27, 2017 letter? To wit: "almost never." (Exhibit 49) The answer is clear: I believe the evidence shows that from Graveley's perspective, precision and the truth are not relevant nor important.

However, this is a minor point. The analogy Graveley presents in this paragraph, the baseball analogy, like the sexual assault analogy he presents in paragraph 13, has

absolutely no relevance for his defense of the misconduct I allege Graveley committed when he published the September 27, 2017 letter. (Exhibit 49) As indicated, I discussed this in great detail in my response to paragraph 13.

Thus, the OLR should give it no weight in support of Graveley's use of it to have the grievance dismissed. However, the OLR should give it appropriate weight to support my effort to convince the OLR to proceed with my case.

Paragraph 15; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 8-9:
Link to Addendum 1 of the Beckman Grievance. Beckman labeled it Appendix R.
Graveley refers to testimony of the analyst in the Fuller trial. Pages 3 - 5.
Graveley encourages the reader to view the testimony of the DNA analyst. It can be found at this link starting at 04:50:55 at the following link:
https://www.youtube.com/watch?v=hDWTVfGN2_M



In a separate appendix (appendix R), Mr. Beckman brings up the testimony of the DNA analyst in the Martice Fuller trial which just occurred in March of this year. This is a case where no identifiable DNA was detected on the firearm. As Mr. Beckman pointed out, the analyst who testified in the Fuller trial described how a number of circumstances can affect the recovery of touch DNA. That included things like the length of time an object is touched and how many times (which is why it was pertinent for me to emphasize the "extremely limited period of time" that Michael Bell would have been touching the gun or holster), the pressure applied, the type of surface being touched, etc. The DNA analyst also testified that the Wisconsin Crime Lab has conducted numerous studies of the frequency of identifiable touch DNA being developed on submitted items and she said that only about 20% of these items have touch DNA on them and fewer have enough DNA to be considered identifiable. This would include items that were likely owned, directly possessed, and/or touched for an

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extended period of time. And, of course, as explained exhaustively above, the question in the officer involved shooting of Michael Bell is not whether **any** identifiable DNA profile was or could possibly be developed, but the likelihood whether any identifiable DNA would be Michael Bell's (as opposed to Officer Strausbaugh's or a third party's) under the circumstances of the case as described by officers. I encourage you to view the linked recorded testimony of the DNA Analyst at Martice Fuller's trial from the above appendix as it in no way suggests that the statements in the 2017 letter were dishonest or deceitful. Quite the opposite.

Points addressed in this section:

- Graveley urges readers of his response to actually view the testimony of Crime Lab DNA Analyst in the Martice Fuller case. Beckman concurs with Graveley.
- Beckman reports that the DNA analyst presented an excellent "witness stand" lecture that summarized the science of touch DNA.
    - Beckman provides a screenshot of the DNA analyst's paraphrased testimony.
    - Beckman proposes that the motivation for Graveley to misrepresent the intensity of the alleged struggle between Bell and the officers during the deadly encounter was because to create a false fact scenario that could result in a situation where it could be reasonable to explain why Bell's touch DNA was not found on Officer Strausbaugh's handgun.

Beckman Response:

Like Graveley, I also encourage readers to view the video of the testimony on DNA Analyst State Crime DNA Analyst Natalie Fischer. It can be found at this link starting at 04:50:55 at the following link: https://www.youtube.com/watch?v=hDWTVfGN2_M

In her testimony, Ms. Fischer confirmed the legitimacy of the literature that I reviewed and documented in my February 28, 2021 Grievance. (Appendix Q) It is notable that her instructive testimony about touch DNA conflicts with Graveley's position on touch DNA as stated in his September 27, 2017 letter. (Exhibit 49)

Graveley contends otherwise and suggests that Fischer's testimony in no way suggests that Graveley's statements in the September 27, 2017 letter (Exhibit 49) dishonest or deceitful. Of course that is true. This is because all of Fischer's testimony was truthful. She merely presented an excellent "witness stand" lecture that summarized the science of touch DNA.

What her testimony does is provide a motive as to why Graveley would misrepresent the officers' account of the alleged life and death struggle between Bell and Strausbaugh over Strausbaugh's handgun. Graveley had to misrepresent the officers' account in order to provide an illegitimate reason why the established science of touch DNA, of which Fischer testified to very well, does not apply to the Bell case.

This is a screenshot of my paraphrased transcription of State Crime DNA Analyst Natalie Fischer's testimony from my March 26, 2021 Addendum 1 (page 4, Appendix R)

The bold typed times are where the video of the testimony can be accessed at https://www.youtube.com/watch?v=hDWTVfGN2_M

1) Fischer has performed DNA analysis in more than 800 items of evidence since she started working for the Wisconsin Crime Lab in 2016. **(04:54:49)**
2) Fischer stated DNA is not found on every item she analyzes. However, she would expect to find DNA on an item if bodily fluids such as blood, saliva, or semen was deposited on a surface. **(04:55:04)**
3) Fischer stated the following about touch DNA (the depositing of skin cells onto an object by a person touching the object) in her response to one of Gabriele's questions: **(04:55:39)**
    a) Touch DNA recovery is affected by a number of different circumstances. Including:
        i) The length of time an object is touched;
        ii) What kind of pressure is applied [during the touch];
        iii) The type of surface that is being touched;
        iv) Touching a surface multiple times, with hard pressure on a textured surface increases the likelihood of touch DNA recovery;
        v) Touching an item in passing that has a smooth surface decreases the likelihood of recovering touch DNA;

Graveley again proposes his flawed idea that the issue in the Bell case ". . .is not whether **any** identifiable DNA profile was or could possibly be developed, but the likelihood whether any identifiable DNA would be Michael Bell's (as opposed to Officer Strausbaugh's or a third party's) under the circumstances of the case as described by the officers."

I addressed this notion extensively in my response to paragraphs 10 and pages 48-49 of this response. I will not repeat my discussion related to that again.

Paragraph 16; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 9:
Link to cited Beckman grievance related to ADA Burgoyne email request. Pages 24-32.
Link to cited Beckman grievance Exhibit 49.[62] (ADA Burgoyne email chain is found on page 4 of this exhibit.) Beckman labels his Grievance as Appendix Q.

> Finally, Mr. Beckman references a case that was being prosecuted by ADA Andrew Burgoyne in 2017 where he requested in an email (see Beckman Exhibit 49) that I ask the crime lab to analyze firearms for DNA evidence. ADA Burgoyne described the factual circumstances of that case as a situation where two firearms were found beneath a mattress during a search warrant and the suspect's girlfriend stated to a detective that the firearms belonged to the suspect. As best I can determine, Mr. Beckman is apparently arguing that because I asked the Lab to accept these firearms for DNA analysis, my statements regarding the unlikelihood of Michael Bell's DNA being located under the circumstances of that case must have been deliberately false.

Beckman Response:

Please refer to my response to paragraph 17, that follows. My response to paragraph 17 should be considered my response to this paragraph.

Paragraph 17; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 9:
Link to Addendum 1 of the Beckman Grievance. Beckman labeled it Appendix R.
Graveley refers to testimony of the analyst in the Fuller trial. Pages 3 - 5.
Link to cited Beckman grievance Exhibit 49.[63] (ADA Burgoyne email chain is found on page 4 of this exhibit.)

> This argument is almost incomprehensible. Should we never seek touch DNA evidence merely because it is rare? What this email actually illustrates is that often times to even get touch DNA testing done on a firearm requires a specific request from the DA's Office. The Lab limits the acceptance of evidence (including firearms) for touch DNA analysis because it is not, in fact, likely that analysis of such evidence will yield probative DNA results (as the analyst in the Fuller trial testified). Furthermore, by requesting DNA analysis be done on behalf of ADA Burgoyne, I was not representing a belief that probative DNA evidence would in fact be found. Because we as prosecutors have to prove our cases beyond a reasonable doubt, we often have to show juries the investigative efforts that were made even if they turn out to be fruitless. In my experience, by not even attempting to get DNA evidence not only might we disappoint the jury's expectations, but we also create an easy way for defense attorneys to criticize the investigation. My decision to ask the Lab to analyze the firearms found in ADA Burgoyne's case is in no way inconsistent with what I wrote in the September 2017 letter. This argument is particularly puzzling given the very different factual circumstances as described in ADA Burgoyne's email as compared with the Michael Bell case.

[62] Mr. Bell's address was redacted from this letter to protect his privacy.
[63] Ibid.

Points addressed in this section:

- Beckman addresses and discusses Graveley's misrepresentation of Beckman's words in the Grievance related to the issue of the ADA Burgoyne September 27, 2017 email.
    - Part of this discussion involves an analysis of Graveley's actions in both the Martice Fuller and Dalquavis Ward murder cases.
- Beckman discusses the difference between the alleged factual circumstances in the Bell case and the circumstances described in the ADA Burgoyne email.
    - Beckman explains why these differences show the inconsistency that Graveley demonstrates between the Bell case and other touch DNA cases.

Beckman Response:

This response also serves as my response to paragraph #16.

I am not sure if Graveley, when he wrote this paragraph in his response to the OLR, actually accurately read the parts of my grievance that he cites in this paragraph to determine what I was trying to convey. Or if he is trying to twist my writing into a different meaning to diminish the power and relevance of my words.

I just re-read pages 24 to 32 of my February 28, 2021 OLR grievance against Graveley. Nowhere in these pages do I ever suggest that Graveley was wrong to authorize that ADA Burgoyne send the firearms in this case to the Crime Lab for touch DNA analysis.

I point out the inconsistency of his authorization to send the firearms with his statement in the September 27, 2017 letter. (Exhibit 49) As indicated, he wrote, ". . .where a firearm or holster was simply touched [Strausbaugh's gun and holster] for an extremely limited period of time, you would **almost never** receive a positive test result for that individual's DNA." (bolding added)

In the second to last paragraph of this section, I wrote the following sentence: "Why, then, does Graveley choose to dismiss the significance of the DNA results on Officer Strausbaugh's gun and holster that showed none of Bell's DNA?" (Appendix O, page 32) This sentence was a means for me to demonstrate the inconsistency in Graveley's actions to what he wrote in the September 27, 2017 letter. (Exhibit 49) It is important to note that Graveley wrote the email to ADA Burgoyne.

In retrospect, maybe I should have made a definitive statement in this section of my Grievance that I believe that Graveley made the absolute correct decision to send the firearms in this case to the crime lab for DNA analysis. I also believe that Graveley believes he made the right decision. However, I assumed that intelligent readers of this section would determine, through their skills to make reasonable inferences, and the other observable actions of Graveley that I describe another sections of Grievance and Addendums, that I was only criticizing Graveley's inconsistency, not his demonstrated belief in the science and potential evidentiary value of the presence of touch DNA in a criminal investigation. I am criticizing his disregard, specifically in the Bell case, of the science and potential exculpatory power of touch DNA.

In the next section of my February 28, 2021 OLR Grievance, (Appendix Q, pages 33 - 56) I provide a detailed discussion of Graveley's actions in being the lead prosecutor of the case, of Dalquavis Ward, who was convicted in September, 2020 of murdering off-duty Racine Police officer John Hetland. This was a case that relied solely on touch DNA.

In my discussion of Graveley's actions in prosecuting this case, I also focused on the inconsistencies of Graveley's actions in his prosecution of the Ward case with what he wrote in the September 27, 2017 letter. (Exhibit 49)

This is demonstrated by what I wrote in the following in this paragraph on page 41 of my February 28, 2021 OLR Grievance, (Appendix Q)

Screenshot of this paragraph from page 41 of (Appendix Q)

> DA Graveley's prosecution of Dalquavis Ward for the armed robbery of Teezer's Bar and the homicide of Officer Hetland rests almost entirely on the discovery of Ward's touch DNA left at four places at the crime scene. The Ward case provides a fascinating means to compare Graveley's aggressive application of touch DNA evidence in that case to his unjustified, and frankly, bizarre dismissal of relevance of absence of Michael Bell's touch DNA on Officer Strausbaugh's handgun and holster during the encounter when Michael Bell was shot in the head by Kenosha Police.

I continue with this theme on page 42 of this section when I wrote the following:

We will see, by Graveley's own words in this very high profile murder case, the absolute rank hypocracy of Graveley's statement and the manner in which he used this obviously false statement to dismiss the Bell Family's pursuit of justice. Logically, if you apply Graveley's logic to touch DNA left on a handgun grip to touch DNA left on a door knob, there is virtually no difference. If Graveley really believed this sentence he wrote in his denial of justice to the Bells, he would apply this belief to his actions in the prosecution of Dalquavis Ward. If he applied this warped logic, Ward would have never been charged and convicted of these heinous crimes.[45]

In footnote #45 to this paragraph, also on page 42 of this section, I wrote the following:

[45] It should be noted that I believe Graveley properly and effectively used and applied the touch DNA science to the Ward case. Had I been a member of the jury that heard the case, based on what I have learned about this case, I would have likely voted to convict Dalquavis Ward of these crimes.

What I wrote in this footnote is true related to my opinion of Graveley's actions in the Ward case.

I suggest that readers of my response to this paragraph read my conclusion to my February 28, 2021 OLR Grievance. (Appendix Q, pages 62 - 64) I believe this entire section supports what I am writing in my response to this paragraph of Graveley's April 29, 2021 response.

I believe it is appropriate for me to present this screenshot of part of page 62 of my February 28, 2021 grievance, (Appendix Q)

Conclusion

It should be noted that based upon my research into the investigation of the murder of Officer Hetland and the Teezer's armed robbery, I believe that all of the many agencies involved did outstanding and very professional job in conducting the investigation of this very tramatic and important case.

I am especially impressed with the work of Lisa Treffinger, the DNA analyst from the Wisconsin State Crime Lab. This case may have remained an unsolved homicide if it were not for her skill in identifying the four locations where the Defendant's touch DNA was found. Her excellent work allowed DA Graveley to successfully present this case to a jury.

I acknowledge that when I consider Graveley's handling of this case, absent of my knowledge of his baseless denial of the relevance of the absence of Michael Bell's touch DNA on Officer Strausbaugh's handgun and holster during that deadly encounter, I am impressed. However, the burden of knowing what I know, and what the Bell Family knows about Graveley's despicable and unethical conduct in the Bell case does not allow me to praise Graveley.

This information from my February 28, 2021 Grievance should support my claim that my criticism of Graveley's actions related to his approval of ADA Burgoyne's request that the firearms be tested for touch DNA was due to the inconsistency between Graveley's actions related to that case and what Graveley wrote in his September 27, 2017 letter. (Exhibit 49)

In this paragraph, Graveley briefly cites testimony in the murder trial of Martice Fuller, which occured in March, 2021. Graveley was the lead prosecutor of this case. Graveley's actions in this case were the subject of Addendum 1 (Appendix R) to my February 28th Grievance. (Appendix Q) Appendix R was filed with the OLR on March 26, 2021.

I presented this Addendum to the OLR to further demonstrate Graveley's professional actions that are inconsistent with his stated position on touch DNA in the Bell case, just as I did with my discussion of the Dalquavis Ward case in the February 28, 2021 Grievance. (Appendix Q)

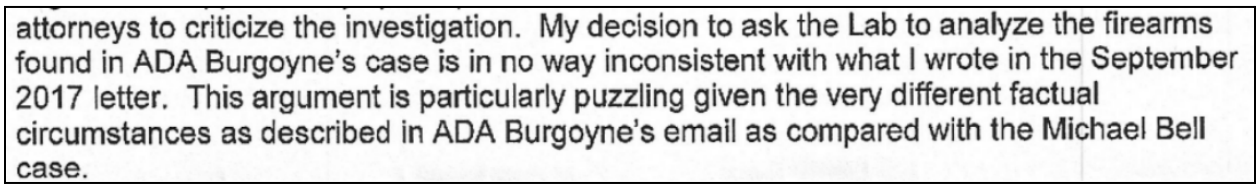
This is a screenshot of footnote #5 on page 5 of Addendum 1 (Appendix R) to my February 28th Grievance. (Appendix Q) This footnote is demonstrative of my intent to illustrate this inconsistency. It also shows my understanding and agreement with Graveley's statements regarding potential actions of defense attorneys and impressions of jurors in jury trials that he makes this response paragraph:

> [5] The discovery of no DNA on the discarded handgun was relied on by the defense counsel as an exculpatory issue, It can be inferred that Graveley and Gabriele called Fischer as a witness to proactively counter what could reasonably be predicted as this defense strategy. Graveley's and Grabriele's anticipation of this likely defense strategy demonstrates that Graveley has a high level of knowledge of the potential and limits of the science of touch DNA. It should be noted that Graveley's actual actions related to the science of touch DNA in this case, and the two other criminal cases outlined in the initial February 28, 2021 grievance, is significantly different from the position he took regarding the relevance of the lack of Michael Bell's touch DNA on Officer Strausbaugh's handgun after the 2004 deadly encounter that Graveley writes about in his September 27, 2017 (Exhibit 49) letter to Mr. Bell, that is the subject of this grievance. (Appendix Q)

Also, like in the Ward case, I expressed my opinion that Graveley's actions in the Fuller case were appropriate. This is a screenshot of part of a paragraph I wrote on page 6 of Addendum 1 (Appendix R) to my February 28th Grievance. (Appendix Q)

> This is yet another example of Graveley's appropriate professional actions related to the application of the actual science of touch DNA being applied to an important criminal case. The initial Grievance to the OLR (Appendix Q) describes two other felony criminal cases, including another high profile murder case, which directly involved Graveley as the prosecutor, in which he also did the correct thing in his application of the science of touch DNA. However, Graveley's actions in these three cases directly conflict with what I believe is the fraudulent position he took regarding the relevance of the lack of Michael Bell's touch DNA on Officer Strausbaugh's handgun after the 2004 deadly encounter that Graveley writes about in his September 27, 2017 (Exhibit 49) letter to Mr. Bell, that is the subject of this grievance. (Appendix Q)

Now, I will finally address the last two sentences that Graveley wrote in his paragraph #17. This is a screenshot from Graveley's paragraph:


attorneys to criticize the investigation. My decision to ask the Lab to analyze the firearms found in ADA Burgoyne's case is in no way inconsistent with what I wrote in the September 2017 letter. This argument is particularly puzzling given the very different factual circumstances as described in ADA Burgoyne's email as compared with the Michael Bell case.

I believe I have argued extensively and effectively that there is significant inconsistency in his official actions in both the Martice Fuller and Delquavis Ward cases and Graveley's approval of the request of ADA Burgoyne as depicted in Burgoyne's September 27, 2017 email and Graveley's position on touch DNA in the Bell case. I will not repeat those arguments here.

In the very last sentence of Graveley's paragraph, he states that my argument is ". . .particularly puzzling given the very different factual circumstances as described in the request of ADA Burgoyne as described in Burgoyne's email as compared with the Michael Bell case."

Graveley is correct. There are two very different factual circumstances between the officers' accounts of the manner in which Bell allegedly handled Officer Strausbaugh's holstered handgun and the information that ADA Burgoyne provided in his September 27, 2021 email (Exhibit 49, page 4.) regarding the manner in which Burgoyne describes those firearms may have been handled by the suspect in his case.

The alleged factual circumstances in the Bell case are described in significant detail on pages 20-29 of this response. These circumstances will not be repeated here.

Alleged factual circumstances described Burgoyne email (Exhibit 49, page 4.):

- Two firearms are found under a mattress.
- Suspect's girlfriend reports that the suspect owns the firearms.
- Other people, including suspect's brother, have access to the residence--no specific information about any circumstances in which the suspect may have actually handled the firearms, except for this information from a seven year old child of the suspect's girlfriend.
    - This child reported to a social worker that at some unspecified time in the past, he saw the suspect shoot a gun outside during the filming of a "rap video." (It is not entirely clear if this fired gun was one of the two guns found under the mattress.

Discussion regarding these two different factual circumstances

There is a striking difference between the two described factual circumstances. The Bell account provides a very high level of specific detail.[64] The Burgoyne email does not.

I believe Graveley made the correct decision to authorize the Crime Lab to test the two firearms described in the Burgoyne email for touch DNA. Despite the scant details provided in the Burgoyne email, I believe there was a reasonable chance that the Crime Lab could have recovered the suspect's touch DNA from the weapons. The investment of the investigative resources in this case to possibly recover the suspect's touch DNA was warranted.

However, this question must be asked: Under which of these two factual circumstances would one expect the crime lab to have a greater chance of recovering touch DNA from the subject firearms? The Bell scenario or the scenario outlined in the Burgoyne email?

Clearly, for all the reasons I outlined in the February 28, 2021 Grievance, the two addendums, and in this very detailed response, the answer is the Bell scenario, as alleged by Officer Strausbaugh.

That is the crux of the disagreement I have with Graveley and why I believe what he wrote, published, and disseminated in the September 27, 2017 letter to Mr. Bell (Exhibit 49) constitutes the misconduct that I allege to be dishonest, fraudulent, deceitful and a misrepresentation of the facts.

The circumstances surrounding Graveley's approval of Burgoyne's request powerfully illustrates that Graveley intentionally and falsely minimizes the relevance of the lack of Bell's touch DNA on Officer Strausbaugh's handgun and holster when Graveley wrote,

- ". . .where a firearm or holster was simply touched [Strausbaugh's gun and holster] for an extremely limited period of time, you would **almost never** receive a positive test result for that individual's DNA."[65] (bolding added)

[64] To be clear, the Bell investigative team does not agree with Officer Strausbaugh's account. As indicated, we believe that Bell never touched Officer Strausbaugh's handgun. But rather, Officer Strausbaugh's handgun got caught on the car mirror causing Officer Strausbaugh to believe that Bell was attempting to disarm him. See Exhibit 3.

[65] As reported in several places in this response and multiple places in the February 28, 2021 Grievance and subsequent addendums, Graveley intentionally misrepresents the alleged intensity of the struggle between Bell and Officer Strausbaugh over Strausbaugh's handgun.

Paragraph 18; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Page 9:
Link to cited attachment 9. (see pages 137 - 142 of this linked document, Exhibit 199.)

> Finally, Mr. Beckman seemingly suggests that because an investigator has not been able to obtain in full the relevant DNA lab reports from ADA Burgoyne's case, that those lab reports are perhaps being concealed because they undermine my statements in the 2017 letter (see Beckman Grievance p. 26-29). I have included the relevant lab reports as attachment 9. Unsurprisingly, no DNA profile capable of comparison was located on either firearm.

Points addressed in this section:

- Beckman addresses Graveley's claim that Beckman is making an unwarranted suggestion of inappropriate government conduct because of Kenosha County Sheriff David Beth's decision to redact nearly all the content of lab reports related to the ADA Burgoyne email.

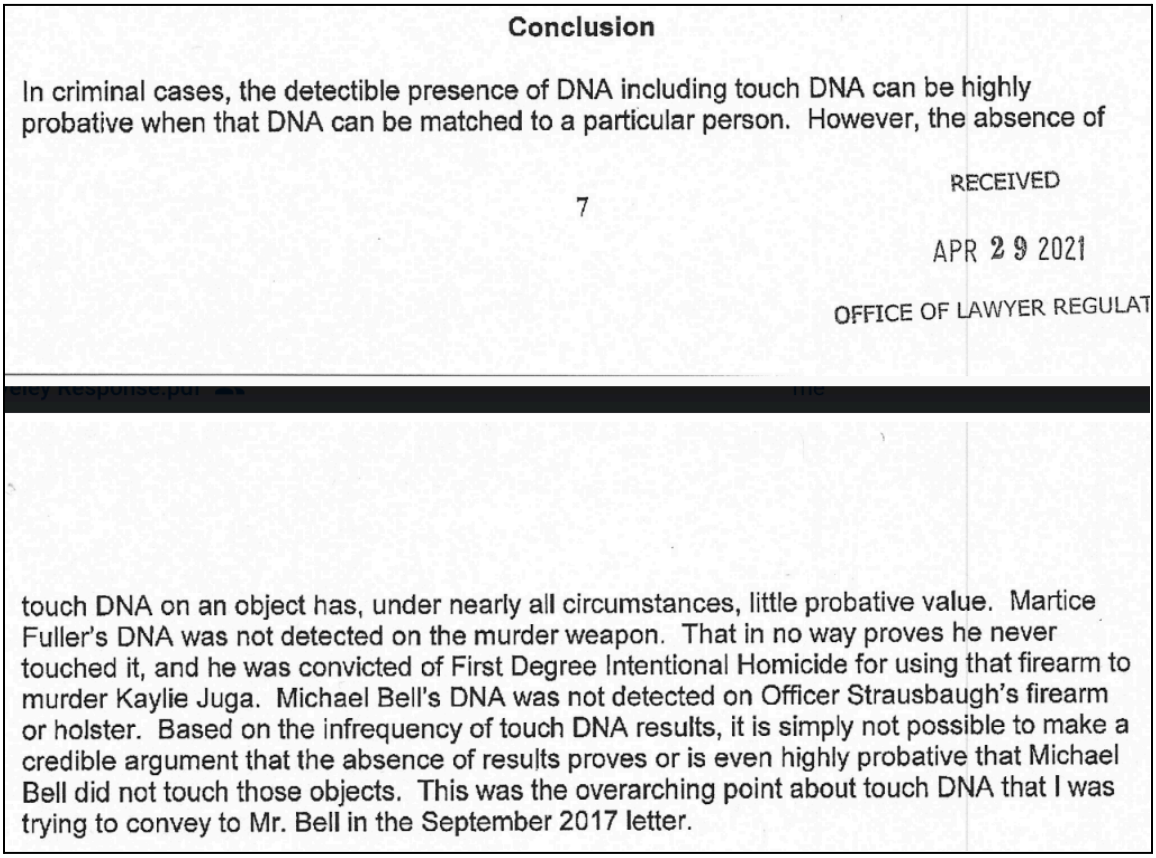
Beckman Response:

As previously indicated, there is a dedicated team of citizens who have been working to secure justice for the Bell family for many years. Our primary tool in conducting our private investigation is Wisconsin's Public Records Law. Over many years, public officials on all levels have been uncooperative and downright obstructive in providing our team with the records that are being sought through legitimate and lawful requests.

The full redaction of seven pages of Crime Lab reports by the Kenosha County Sheriff in this case was yet another example of this obstruction.

I appreciate the fact that Graveley decided to provide the full unredacted records with his response. However, it should be noted that Graveley's release of these records is in his current interest. It is not an altruistic act. Kenosha County Sheriff David Beth could have done the same thing, but he chose not to. Graveley's hands are not clean.

Paragraph 19; Graveley's April 29, 2021 response to OLR Grievance
Exhibit 195, Pages 9-10:
Link to Addendum 1 of the Beckman Grievance. Beckman labeled it Appendix R.
Graveley refers to testimony of the analyst in the Fuller trial. Pages 3 - 5.
Link to the full September 27, 2017 letter cited by Graveley in this paragraph.[66] (Exhibit 49)



Conclusion

In criminal cases, the detectible presence of DNA including touch DNA can be highly probative when that DNA can be matched to a particular person. However, the absence of

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touch DNA on an object has, under nearly all circumstances, little probative value. Martice Fuller's DNA was not detected on the murder weapon. That in no way proves he never touched it, and he was convicted of First Degree Intentional Homicide for using that firearm to murder Kaylie Juga. Michael Bell's DNA was not detected on Officer Strausbaugh's firearm or holster. Based on the infrequency of touch DNA results, it is simply not possible to make a credible argument that the absence of results proves or is even highly probative that Michael Bell did not touch those objects. This was the overarching point about touch DNA that I was trying to convey to Mr. Bell in the September 2017 letter.

Points addressed in this section:

- Beckman provides a detailed discussion of the completely different environmental conditions subjected to Officer Strausbaugh handgun and the murder weapon in the Martice Fuller murder case. This discussion debunks Graveley's claim that the lack of DNA on the gun in the Fuller case is somehow relevant to the lack of DNA on the gun in the Bell case.

Beckman Response:

I take issue with the two points that Graveley makes in this paragraph.

[66] Mr. Bell's address was redacted from this letter to protect his privacy.

My primary point in my March 26, 2021 Addendum 1 (Appendix R) to my February 28th was to show that the sworn testimony of the State Crime DNA Analyst Natalie Fischer confirmed the legitimacy of the literature that I reviewed and documented in my February 28, 2021 Grievance. (Appendix Q) It is notable that her instructive testimony about touch DNA conflicts with Graveley's position on touch DNA as stated in his September 27, 2017 letter. (Exhibit 49)

This is a screenshot of my paraphrased transcription of State Crime DNA Analyst Natalie Fischer's testimony from my March 26, 2021 Addendum 1 (page 4, Appendix R) The bold typed times are where the video of the testimony can be accessed at https://www.youtube.com/watch?v=hDWTVfGN2_M

1) Fischer has performed DNA analysis in more than 800 items of evidence since she started working for the Wisconsin Crime Lab in 2016. **(04:54:49)**
2) Fischer stated DNA is not found on every item she analyzes. However, she would expect to find DNA on an item if bodily fluids such as blood, saliva, or semen was deposited on a surface. **(04:55:04)**
3) Fischer stated the following about touch DNA (the depositing of skin cells onto an object by a person touching the object) in her response to one of Gabriele's questions: **(04:55:39)**
    a) Touch DNA recovery is affected by a number of different circumstances. Including:
        i) The length of time an object is touched;
        ii) What kind of pressure is applied [during the touch];
        iii) The type of surface that is being touched;
        iv) Touching a surface multiple times, with hard pressure on a textured surface increases the likelihood of touch DNA recovery;
        v) Touching an item in passing that has a smooth surface decreases the likelihood of recovering touch DNA;

Graveley correctly points out that Martice Fuller's DNA was not found on the gun he used to kill a fifteen year old girl and shoot and seriously injure her mother. However, Graveley conveniently omits why Fuller's DNA was not found on that gun. DNA Analyst Fischer's testimony explains exactly why none of Fuller's DNA was found on the murder weapon. The explanation is clearly irrelevant to the reason why none of Bell's DNA was found on Officer Strausbaugh's handgun. It is not honest for Graveley to argue there is a similarity between the Bell case and the Fuller case and that the absence of Fuller's DNA on the gun in his case supports Graveley's position on touch DNA in the Bell case.

Unlike the gun in the Fuller case, Officer Strausbaugh's handgun was not subjected to any adverse environmental conditions before it was swabbed for touch DNA. Officer Strausbaugh's handgun was placed into evidence and swabbed for touch DNA shortly after the shooting. That is a fundamental difference that renders Graveley's comparison fully irrelevant.

Screenshot of parts of page 5 of Addendum 1 (Appendix R). (This testimony is in regards to the gun in the Fuller case.)

> Fischer's testimony continued. Fischer stated that she found no identifiable DNA on the swabs submitted from the handgun to the crime lab. Additional testimony was presented that indicated that the handgun was discovered beneath a storm sewer grate in Racine, days after the crime was committed. The handgun was wrapped in a saturated disposable diaper and then sealed in a plastic garbage bag. Fischer stated that due to the environmental conditions of which the gun was exposed, she would not expect to find DNA on this handgun.[5]

[5] The discovery of no DNA on the discarded handgun was relied on by the defense counsel as an exculpatory issue, It can be inferred that Graveley and Gabriele called Fischer as a witness to proactively counter what could reasonably be predicted as this defense strategy. Graveley's and Grabriele's anticipation of this likely defense strategy demonstrates that Graveley has a high level of knowledge of the potential and limits of the science of touch DNA. It should be noted that Graveley's actual actions related to the science of touch DNA in this case, and the two other criminal cases outlined in the initial February 28, 2021 grievance, is significantly different from the position he took regarding the relevance of the lack of Michael Bell's touch DNA on Officer Strausbaugh's handgun after the 2004 deadly encounter that Graveley writes about in his September 27, 2017 (Exhibit 49) letter to Mr. Bell, that is the subject of this grievance. (Appendix Q)

The reasons why Fuller's DNA was not on the gun he used was known and fully explainable by the science of touch DNA. The reasons why Bell's DNA was not on Strausbaugh's handgun cannot be explained by the same science.

Based on the officers' accounts of the encounter between Bell and Strausbaugh, Bell's touch DNA should have been on Strausbaugh's handgun, if one objectively applies the science of touch DNA. Faced with this dilemma, rather than consider other alternatives that are actually consistent with the forensic evidence, Graveley finds it necessary to misrepresent, and yes, lie, about what the officers actually report happened during the encounter.

DNA is powerful evidence that cuts both ways. It requires law enforcement officers and prosecutors to be consistent in their application of DNA evidence in criminal cases. Prosecutors must always engage in self-reflection to be sure they apply the appropriate

weight to DNA evidence, even the lack of DNA when it should be present, in cases where it is exculpatory.

In the Bell case, the lack of Bell's DNA on Officer Strausbaugh's handgun is exculpatory, yet Graveley refuses to consider it to be so. One aspect of Graveley's closing argument in the Dalquavis Ward illustrates this point and Graveley's inconsistent actions very well. The screenshot of a footnote that was part of my discussion of this part of Graveley's closing argument that follows provides the details.

Footnote #48, page 50, from my February 28, 2021 Grievance. (Appendix Q)

[48] In this excerpt, Graveley implies that had the suspect's touch DNA was **not** located at the scene of the crime, the Defendant would be correct in his position that he has been falsely accused of these crimes. Graveley's implied argument in this excerpt, if he would apply this same position and logic to the fact of the lack of Michael Bell's touch DNA on the handgun and holster of Officer Strausbaugh, should negate the dubious position of nearly the entire Kenosha criminal justice system that Michael Bell was forcibly attempting to disarm Officer Strausbaugh when he was fatally shot in the head by Kenosha Police. Yes, Michael Bell has actually been falsely accused of attempting to disarm Strausbaugh. The lack of his touch DNA on Officer Strausbaugh's handgun is compelling evidence that Bell has been falsely accused. However, it can be inferred that this does not matter to Graveley, or any other government officials who can authorize a legitimate investigation, because Michael Bell is dead. From their perspective, it is just best to not consider the lack of evidence that would clear him.

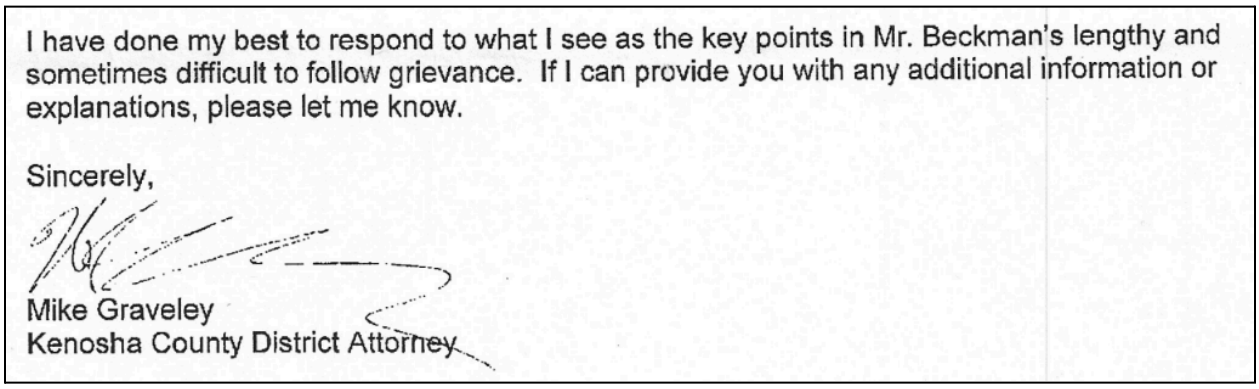
Paragraph 20; Graveley's April 29, 2021 response to OLR Grievance Exhibit 195, Page 10:

Just as in 2018, Mr. Bell (and, in this instance, Mr. Beckman working on some level of coordination with Mr. Bell) is attempting to use the Office of Lawyer Regulation as a weapon of intimidation. Just as in 2018, the allegations are completely without merit.

Beckman Response:

NOTE: refer to responses to paragraphs 1 and 3.

Paragraph 21; Graveley's April 29, 2021 response to OLR Grievance Exhibit 195, Page 10:



I have done my best to respond to what I see as the key points in Mr. Beckman's lengthy and sometimes difficult to follow grievance. If I can provide you with any additional information or explanations, please let me know.

Sincerely,

Mike Graveley
Kenosha County District Attorney

Beckman Response:

No response to this paragraph is offered.

General conclusion of Beckman's responses to Graveley's paragraphs

Although I was not surprised by the extreme implausibility of Graveley's response, I admit it was a disturbing read. I am disturbed because this powerful man had the audacity to put such blatant misrepresentations into the September 27, 2017 letter (Exhibit 49), a public and very important document, and then submit into the record of a John Doe proceeding. Graveley's arrogance then allowed him to draft a response to the OLR that does not directly address the allegations I have made against him. Further, he presents nothing but his words as evidence to support his claims of veraciousness.

This is exactly the type of behavior that requires action by the Office of Lawyer Regulation. Graveley's disturbing actions in publishing and disseminating the deceptive September 27, 2017 letter (Exhibit 49) are amplified and perversely legitimized by the OLR's bizarre decision to dismiss this grievance.

I believe the extreme weakness of Graveley's response and the power of the evidence that I presented in this response will convince the OLR to fulfil their mission to protect the public from unethical attorneys. It should not matter if the unethical lawyer is an elected District Attorney.

Both criminal defendants and victims of criminal acts, even criminal acts at the hands of the police, are entitled to be served by an ethical and honest District Attorney. I believe I have presented powerful and compelling evidence that Graveley engaged in unacceptable, nondiscretionary, and expressly prohibited ethical misconduct in the manner in which he published and disseminated the deceptive September 27, 2017 letter. (Exhibit 49)

It is clear that Graveley did so to justify the denial of an investigation into a homicide that he could not deny due to the compelling forensic and other relevant evidence. Thus, Graveley resorted to misrepresentation and deception to justify the denial. It is sad that such behavior is a pattern and practice among many Kenosha County law enforcement officials.[67] This grievance is only one of several actions that the Bell team is pursuing to stop these insidious practices.

On April 1, 1940, United States Attorney General Robert Jackson, who would later serve as a Justice on the United States Supreme Court, stated the following in a speech to United States Attorneys gathered for a conference in Washington DC: (Exhibit 237) *"The prosecutor has more control over life, liberty, and reputation than any other person in America. . . While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst."* [68]

I believe I have presented extremely compelling evidence that Graveley acted maliciously and with a debased motive when he published and disseminated the deceptive September 27, 2017 letter. (Exhibit 49) This evidence will be further enhanced by the new information that will follow in the next sections. I believe that Attorney General and Supreme Court Justice Jackson would agree that Graveley, by his actions, has cast himself into the pool of the worst of forces in American society. The OLR can not simply ignore this terrible ethical transgression.

I urge the OLR to avoid soiling its credibility by engaging in denial instead of regulation. Please look back at the Author's Foreword of this response. Remember the shame that the Securities and Exchange Commission had to face in their inexcusable omissions in the Bernard Madoff case.

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[67] I recognize the boldness of this statement. However, I stand by the statement and believe I have collected and documented significant information and evidence to support this claim. Much of it is not directly relevant to this Grievance. Thus it is not included in this grievance, addendums, and response.

[68] Jackson, R. H. (1940, April). *The Federal Prosecutor. The Second Annual Conference of United States Attorneys* . Washington DC; Great Hall - Department of Justice Building . https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf.

The OLR has a duty to the citizens of Wisconsin to not merely accept what either Graveley and I present at face value. I have indicated several basic investigatory actions the OLR could take to verify or debunk statements made by both of us. One of the most important of these basic actions would be to interview WI DOJ Crime Lab DNA Analyst Gretchen DeGroot to determine what, if anything, she actually told Graveley about his position on touch DNA in the Bell case. Why the OLR has failed to perform this basic function is a mystery to me.

Please consider that the denial of this grievance without a formal investigation does not rid the OLR of the burden of this matter. Doing the right thing is not always the easiest or popular thing. However, it will spare the OLR of the reckoning it will face in the future should it choose the tempting and easy path of denial.

New information--Possible non-consideration of Addendum 2 (Appendix S) by OLR staff

Summary of this section:

This section will provide information that supports my concerns that the OLR has not given any consideration to information I provided that shows that Graveley submitted the September 27, 2017 letter (Exhibit 49) into the record of a John Doe proceeding. I allege that this letter, which I allege to be a fraudulent and deceptive misrepresentation of the truth, influenced the Circuit Court judge in his decision to dismiss the John Doe Petition.

I will also address new information, obtained on June 7, 2021 directly from a June 1, 2021 letter from DA Graveley, regarding one of the significant consequences of the decision to dismiss the John Doe Petition.

I believed this was very important information that needed to be considered by the OLR in their evaluation of my Grievance.

Submission/receipt of Appendix S and Graveley response to OLR:

Appendix S, which was Addendum #2 of my February 28, 2021 Grievance. (Appendix Q) was emailed to OLR intake (This is a copy and paste of the recipient email address from the actual email. <olr.intake@wicourts.gov> (Exhibit 192[69]))

[69] Exhibit 192 was copied to Mr. Bell. Bell forwarded it to officials at the Wisconsin Department of Justice.

on April 6, 2021. (Exhibit 192) Appendix S was a fully digital document (a google doc) A link to Appendix S was in the email. (Exhibit 192).

In this email (Exhibit 192) I specifically asked that the OLR acknowledge receipt of the document. (Appendix S)

I did not receive any acknowledgement from the OLR over the next few days. I decided I would call them on Monday, April 12, 2021 to confirm that they received Appendix S. (Previously, I had difficulty in securing OLR acknowledgement of their receipt of Appendix R, the first addendum to the February 28, 2021 Grievance. (Appendix Q))[70]

On Monday, April 12, 2021, before I had an opportunity to place my call to OLR intake to make my inquiry regarding their failure to acknowledge receipt of Appendix S, I received a telephone call from OLR Investigator Jonathon Zeisser. He called me to update me on the status of my Grievance. Towards the beginning of our conversation, I asked him if he had received Addendum 2 (Appendix S) of my grievance. I told Zeisser I emailed it to OLR Intake on April 6th. Zeisser told me that he had not received it. I told him that as soon as our call was done, I would email the link to the Addendum to him. I did so a short time after our call, Exhibit 206.

During my April 12, 2021 telephone conversation with Investigator Zeisser, I harbored some concern about the fact that Zeisser has yet to receive Addendum #2. (Appendix S) I implored him to read and consider the information in Appendix S. He assured me that he would.

During this conversation, Zeisser asked me several questions about my Grievance. I answered these questions to the best of my ability. Zeisser also told me that he would be sending Graveley a number of questions to answer,[71] likely by the end of the week. The next day, April 13, 2021, I sent him an email to provide additional information to supplement the answers I provided. (Exhibit 197)

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[70] Previously, when I submitted Appendix R, (Addendum 1 to the February 28, 2021 Grievance, (Appendix Q)) there were some issues in having the OLR acknowledge its receipt. This is what happened: On March 26, 2021 I emailed Appendix R to OLR intake.(Exhibit 205) In this email, I asked the OLR to acknowledge its receipt. The OLR did not immediately respond. On Monday, March 29, 2021, I telephoned the OLR general intake phone number and left a message with information about the email I sent the previous Friday. I ask that I be called back. I did not receive a call back or an email acknowledging receipt of Appendix R . On Wednesday, March 31, 2021, I sent another email (Exhibit 205) to OLR intake inquiring about their receipt of Appendix R. I did not get a response from OLR intake. On Sunday, April 4, 2021 I sent another email (Exhibit 205) to OLR intake advising them of my transmission of Appendix R . On Monday, April 5, 2021 I received an email (Exhibit 205) from OLR intake with the following text: "Yes, we did receive your emails of March 26th and March 31st"

[71] On May 11, 2021, with Exhibit 201, I requested the information and questions that Zeisser submitted to Graveley. Zeisser responded that this request was denied.

I did not hear anything from Zeisser or anyone else from the OLR until Monday, May 10, 2021. On that day, I received a letter in the U.S. Mail from the OLR and Investigator Zeisser. This is Exhibit 195.

Exhibit 195, consisted of a two page letter from Zeisser. Curiously, it describes my grievance as an **"Inquiry Regarding Atty. Michael D. Graveley"**. The letter (Exhibit 195) goes on to say that **"Based on a preliminary intake evaluation of your inquiry, the Officer of Lawyer Regulation has determined that there is an insufficient basis to proceed."**[72]

Exhibit 195 also consists of the eight page response of Graveley to my Grievance. Graveley dated this response April 29, 2021. It is also stamped received by the OLR on that same date. This eight page response has the 21 paragraphs that I have individually addressed in this response.

On May 10, 2021, in an email (Exhibit 196) to Zeisser, I requested that Zeisser provide me with the supporting documents Graveley cited and included in his April 29, 2021 response. (Exhibit 195)

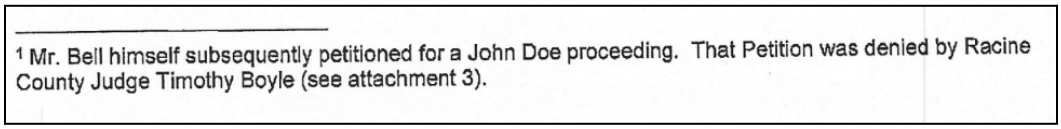
On May 11, 2021, Zeisser responded by email to this request. (Exhibit 198) Attached to Exhibit 198 were the supporting documents that Graveley cited and included in his April 29, 2021 response. (Exhibit 195) These supporting documents are Exhibit 199**.**

Indications that the OLR did not provide any consideration to Appendix S:

- Did investigator Zeisser have time to read, absorb, and formulate appropriate questions regarding Appendix S for Graveley before Zeisser sent Graveley the notice for him to respond?
    - Seisser first became aware of Appendix S on April 12, 2021 even though it was emailed to the OLR on April 6, 2021. (Exhibit 206)
    - Graveley's response to the OLR was received on April 29, 2021. It is likely that Graveley emailed his response on that same date. (Exhibit 195)
    - During our April 12, 2012 telephone conversation, Seisser indicated that he hoped to send his request for a response to Graveley by the end of the week. (The date for that upcoming Friday was April 16, 2021.)
        - It is not known to me what date and by what means Seisser sent the request for response to Graveley.
    - It is my understanding that SCR: 22.03(2) allows a respondent 20 days to file a response.

[72] At some point in the future I may address the curious use of this language with other governmental and judicial entities.

        - April 29, 2021 is 17 days after April 12, 2021. April 29, 2021 is 13 days after April 16, 2021.
            - It is certainly possible that Graveley filed his response without any delay. However, I do not know, due to my inability to get the record, exactly what day and by what means the request for Graveley to respond was sent to him.[73]
- Did the OLR actually request Graveley to respond and to provide information about his actions related to Appendix S?
    - In the text of his eight page response, (Exhibit 195) Graveley mentions the John Doe Petition filed by Michael Bell only once. It is in footnote #1 on page 1 of Graveley's response. This is a screenshot of that footnote:



[1] Mr. Bell himself subsequently petitioned for a John Doe proceeding. That Petition was denied by Racine County Judge Timothy Boyle (see attachment 3).

        - Graveley does not provide any discussion or elaboration related to this footnote anywhere in the text of this response.
        - At the end of this footnote, Graveley writes "(see attachment 3)".
            - Attachment 3 can be viewed from page 50 to 77 of Exhibit 199. It consists of the actual Petition filed by Mr. Bell and the ruling by Judge Timothy Boyle.
                - As with footnote #1, Graveley offers absolutely no discussion, elaboration, nor any information related as to why he included these documents or the relevance of these documents to his response.
                - Graveley also includes no information about his role in the John Doe Petition. He does not disclose that Judge Boyle directed him to conduct the statutory investigation; that he performed this investigation after Mr. Bell personally asked him to recuse himself; and that Mr. Bell specifically asked the court to appoint a special prosecutor; and Graveley did not disclose that he submitted the September 27, 2017 letter (Exhibit 49) into the record of the John Doe and actually referred to it in his court ordered submission: "*Written Response of Kenosha County District Attorney*

[73] On March 11, 2021, I sent an email to Zeisser and requested ". . .of whatever and all letter(s), email(s), or other correspondence you sent to Graveley that prompted his April 29, 2021 response to you." A few minutes after I sent this request, Zeisser responded with a denial of the request. (Exhibit 201)

Michael Graveley Concerning Michael M. Bell's Petition For a John Doe Proceeding" (Exhibit 94)[74]

- Did the OLR provide Graveley with a digital copy of Appendix S?[75]
    - Nowhere in Graveley's April 29, 2021 response (Exhibit 195) does Graveley comment on nor discuss that I alleged, in Appendix S, that he violated **SCR 20:3.3 Candor toward the tribunal.**[76] It was in the second addendum, (Appendix S) in which I first introduced the alleged violation of this code.
    - In his April 29, 2021 response, (Exhibit 195) Graveley specifically states one of the two Supreme Court Rules that I allege he violated, specifically **SCR 20:8.4(c)**, on pages 1, 2, and 3 of his response. This is the code that I allege Graveley violated in my February 28, 2021 Grievance (Appendix Q) and the March 26, 2021 Addendum 1. (Appendix R).

Consequences of Graveley's actions alleged in Appendix S:

I extensively addressed the consequences of Graveley's action of entering the September 27, 2017 letter (Exhibit 49) into the record of the John Doe Petition filed by Mr. Bell on November 19, 2018 in the Appendix S, Addendum 2 of my February 28, 2021 Grievance. (Appendix Q) Appendix S should be read and considered part of this section.

As indicated, it is very likely that Graveley's submission and citation of the deceptive September 27, 2017 letter (Exhibit 49) into the record of the John Doe Petition

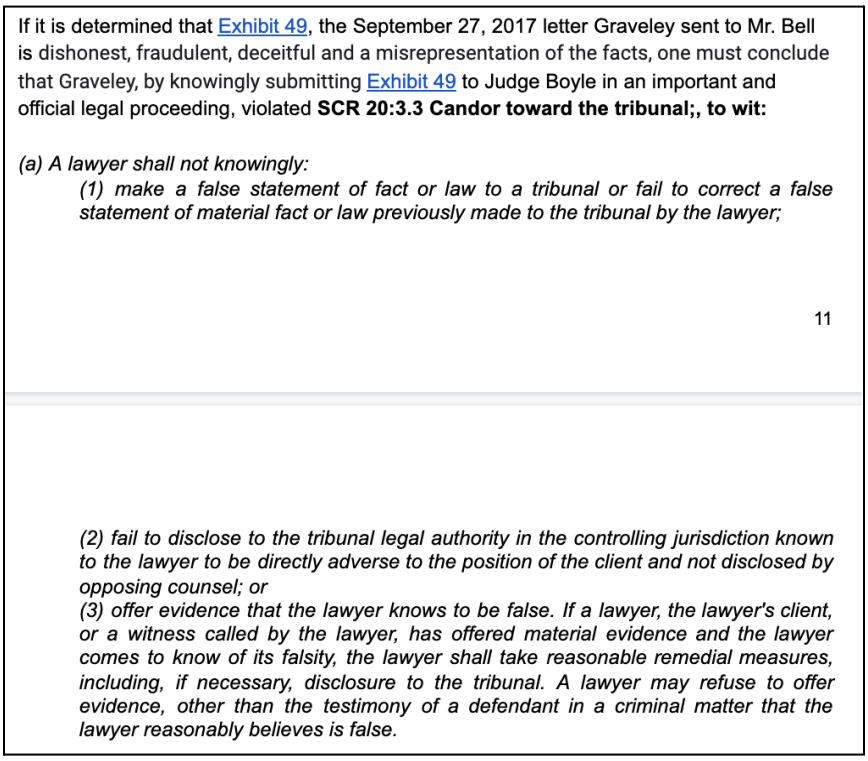
[74] See Appendix S pages 11-14 for a detailed discussion of the probable influence of the September 27, 2017 letter (Exhibit 49) on Judge Boyle's decision in the case. Also, page 13 of this document has screenshots of the passages in which Graveley elaborates about his inclusion of the September 27, 2017 letter (Exhibit 49) into the record of the John Doe Proceeding. I also provide appropriate context and analysis of this inclusion on page 15.

[75] If he has not been given a copy, he needs to be provided with one and be given an opportunity to respond.

[76] This is the text of this rule: **SCR 20:3.3 Candor toward the tribunal;, to wit:**
(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false.

influenced the decision of the Judge to deny the petition. Thus, I submit that Graveley engaged in misconduct contrary to Wisconsin **SCR 20:3.3 Candor toward the tribunal.**

This is a screenshot of what I wrote on pages 11-12 of Appendix S . It contains the text of Wisconsin **SCR 20:3.3**:



If it is determined that Exhibit 49, the September 27, 2017 letter Graveley sent to Mr. Bell is dishonest, fraudulent, deceitful and a misrepresentation of the facts, one must conclude that Graveley, by knowingly submitting Exhibit 49 to Judge Boyle in an important and official legal proceeding, violated **SCR 20:3.3 Candor toward the tribunal;, to wit:**

(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

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(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false.

It is important to pause to examine the significance of Graveley's actions in publishing and submitting the deceptive September 27, 2017 letter (Exhibit 49) into the record of the John Doe Petition and why Graveley's action does **not** constitute a mere "de minimis violation" of the Supreme Court Rules.

According to Black's law dictionary, a "de minimis violation" is one in which *"The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles."*[77]

The last two sentences of Wisconsin Supreme Court Rule 21.02 Office of Lawyer Regulation state the following:[78]

[77] Black, H. C., MA, Nolan, J. R., Nolan-Haley, J. M., Connolly, M. J., Hicks, S. C., & Alibrandi, M. N. (1990). *Black's Law Dictionary* (6th Centennial Ed.) St. Paul, MN: West Publishing. Page 431.

[78] This SCR can be accessed at the following web site: https://www.wicourts.gov/supreme/sc_rules.jsp

"The office [OLR] has discretion whether to investigate and to prosecute de minimis violations. Discretion permits the office to prioritize resources on matters where there is harm and to complete them more promptly."

Thus, if this grievance involved a mere "de minimis violation" of the Supreme Court Rules then the OLR would have the authority to exercise discretion and dismiss it. (Also, it is apparent that Graveley's actions in publishing and disseminating the deceptive September 27, 2017 letter (Exhibit 49) caused great harm. This fact begs for OLR intervention.)

Maybe it is for that reason the OLR dismissed the grievance, due to what I believe is the OLR's failure to consider the information provided in the Addendum 2 (Appendix S), which was submitted to the OLR on April 6, 2021. (I discuss my concerns and belief that the OLR did not consider the information in Addendum 2 (Appendix S) in this section of this response, pages 84 - 94.)

As indicated on the previous page, I allege that Graveley violated Wisconsin Supreme Court Rule 20:3.3 (Candor towards the tribunal) when he published and submitted the deceptive September 27, 2017 letter (Exhibit 49) into the record of the John Doe Petition and actually cited this letter in his court ordered response.

It is important to note that the text of this SCR contains the words "A lawyer **shall not** knowingly:. . ." (bolding added) before the rule describes the three prohibited actions addressed in the rule.

The use of the words "shall not" in this code is significant. This language makes this violation to be an "imperative," or strictly prohibited behavior. Black's Law Dictionary defines the word "shall" as follows:[79]

> *"As used in statutes, contracts, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary significance, the term "shall" is a word of command, and one which has always or which must be given compulsory meaning; as denoting obligation. The word in ordinary usage means "must" and is inconsistent with the concept of discretion. . ."*

The Wisconsin Supreme Court Code recognizes the significance of rules it deems to be imperatives by its incorporation of the term "shall' or "shall not" in the text of specific Supreme Court Rules. This is codified in the Preamble/Scope of Chapter 20 of the

[79] Black, H. C., MA, Nolan, J. R., Nolan-Haley, J. M., Connolly, M. J., Hicks, S. C., & Alibrandi, M. N. (1990). *Black's Law Dictionary* (6th Centennial Ed.) St. Paul, MN: West Publishing. Page 1375.

Wisconsin Supreme Court Rules of Professional Conduct for Attorneys State the following in section 14:[80]

> *Scope [14] "The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself.* ***Some of the rules are imperatives, cast in the terms "shall" or "shall not."*** *These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion." (Bolding added)*

This code clearly places Graveley's actions in publishing and submitting the deceptive September 27, 2017 letter (Exhibit 49) into the record of the John Doe Petition into the realm of a violation of an imperative rule, and clearly outside the discretion of the OLR to simply dismiss it to make it go away. Graveley's alleged actions are clearly not mere de minimis violations which would allow the OLR to dismiss the grievance without any type of investigation.

The harm caused by Graveley's actions in publishing and submitting the deceptive September 27, 2017 letter (Exhibit 49) into the record of the John Doe Petition is real, significant, and demonstrative.

Let us discuss why this is so. . .

In May, 2021, Mr. Bell had a conversation with a prominent Wisconsin investigative journalist. This journalist was investigating and gathering information regarding issues related to the Bell case. One issue that was of interest to this journalist was the refusal of Wisconsin Attorney General Josh Kaul to meet with Michael Bell. In fact, the Attorney General has refused to even acknowledge or respond to any of these nine written requests for a meeting[81], except for one time.[82]

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[80] This SCR can be accessed at the following web site: https://www.wicourts.gov/supreme/sc_rules.jsp

[81] Mr. Bell's efforts to set up a meeting, including links to all nine written requests, is documented in detail in Appendix F. Mr. Bell's first attempt to set up a meeting with Josh Kaul was in December, 2018, when Kaul was the Attorney General Elect.

[82] Tina Virgil is an administrator with the Wisconsin Department of Justice. Mr. Bell sent her an email to Ms. Virgil on March 30, 2021 asking for her assistance in setting up a meeting with Mr. Kaul. The March 30, 2021 email and Virgil's response is Exhibit 180. Bell sent these emails to Tina Virgil because Bell had met her previously in his work to reform procedures related to law enforcement fatalities. Bell believes she understands and is supportive of our efforts.

During this May, 2021 conversation with Mr. Bell, this journalist told Bell that he had a recorded interview with AG Kaul. During this interview, the journalist asked Kaul why he is refusing to meet with Bell, or even acknowledge Bell's written requests for a meeting. The journalist told Bell that Kaul said that the Bell case was no longer a concern because a judge had dismissed a John Doe Petition that Bell filed.

I initially decided to not provide this information to the OLR for several reasons. It is hearsay. The journalist provided this information to Mr. Bell with the understanding that the journalist not be identified. Also, I could not independently verify the information. For these reasons, I believed it was best to not include this information.

However, my initial decision to not include this information changed on June 7, 2021.

On that date, Mr. Bell provided me with a June 1, 2021 letter (Exhibit 223) that Graveley sent to Attorney Chris Meuler. Bell had retained Meuler to work on several aspects of his pursuit of justice in his son's death. One of Meuler's tasks was to secure the release of the bullet that killed Bell's son so that it could be examined by a forensic ballistics expert who Mr. Bell hired to investigate circumstances related to the shooting that are inconsistent with the official account of the shooting.[83] Meuler asked Graveley to authorize the release of the bullet to the forensic ballistics expert.

In the June 1, 2021 response (Exhibit 223) Graveley sent to Meuler, Graveley indicated that his office does not have possession of the bullet and was not the appropriate agency to address the request for release.

In addition, Graveley wrote the following in the second paragraph of the one page Exhibit 223.

> Regarding this case, the Kenosha District Attorney's Office believes itself to be bound by the 2019 decision of Racine County Judge Timothy Boyle. Judge Boyle reviewed this officer involved shooting pursuant to a Petition for a John Doe proceeding made by Mr. Bell and concluded that there were no viable criminal charges that could be issued.

This paragraph is a confirmation from Graveley himself of the power of Judge Boyle's denial of the 2018 John Doe Petition filed by Mr. Bell. Graveley's paragraph also adds tremendous credibility to the information provided to Mr. Bell by the journalist about what Attorney General Kaul reportedly said about the John Doe ruling in the Bell case. **It is the same as what Graveley wrote!**

[83] Additional information regarding these inconsistencies are documented in Appendix C and Appendix N.

I doubt that I could, as a private citizen, get an audience with the Attorney General and ask him if it is true that he will not even provide the simple courtesy of a response to Mr. Bell's requests for a meeting because of the ruling in the John Doe petition. However, an investigator from the Office of Lawyer Regulation could--and certainly should.

Why? Because it is important. Also, it would be a necessary basic investigatory step if the OLR was actually interested in fulfilling its mission to protect Wisconsin citizens from unethical actions of attorneys, even if that unethical attorney is a powerful sitting District Attorney.

Remember, the basis of my OLR Grievance is that Graveley wrote and presented the misleading, deceptive, and fraudulent September 27, 2017 letter (Exhibit 49) to Mr. Bell. To review, in this letter, Graveley intentionally misrepresented the alleged intensity of the physical struggle between Bell and Officer Strausbaugh over Officer Strausbaugh's handgun.[84] Graveley engaged in this deception in order to try to explain away the fact that none of Bell's DNA was on Officer Strausbaugh's handgun. Graveley then fabricated statements that State Crime Lab DNA analysts (yes, plural) concurred with his position that he would not expect to find Bell's DNA on the handgun. (it is important to note that Graveley still did not provide evidence in his OLR response to support his claim of concurrence by DNA analysts.) Graveley then made the claim that his position is supported by the literature on touch DNA, Yet, in his OLR response, when Graveley should have actually backed up his statement, he offered scant to no evidence that shows what he wrote is true. He offered no studies that support his claim that his position is supported by the literature.

There is more. After Graveley published this fraudulent September 27, 2017 letter (Exhibit 49) to Mr. Bell, Graveley deliberately entered it into the record of the John Doe Petition that Mr. Bell filed in November 2018. Not only did Graveley put the letter into the record, he actually cited it in his court ordered response to the John Doe Petition.[85] (See Exhibit 94, pages 1, 4, 5, and 6.)

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[84] To be clear, the Bell investigative team does not agree with Officer Strausbaugh's account. As indicated, we believe that Bell never touched Officer Strausbaugh's handgun. But rather, Officer Strausbaugh's handgun got caught on the car mirror causing Officer Strausbaugh to believe that Bell was attempting to disarm him. See Exhibit 3.

[85] There are several other inaccuracies in Exhibit 94 and the September 27, 2017 letter (Exhibit 49). Specifically, these inaccuracies relate to information that the United States Department of Justice conducted investigations into the Bell shooting. Information has recently been developed that this contention is simply not true. Actually, the US Department of Justice has no records, what-so-ever, of any investigation that they may or may not have conducted into the Bell case. (See Appendix O)

Only Judge Boyle can say exactly what influence the September 27, 2017 letter (Exhibit 49) and Graveley's citation of this letter, actually had on his decision to dismiss the John Doe Petition. However, it would be very naive to believe it had no influence.

Yes, this is a very serious matter. Providing false information to a Court, be it through testimony or documents placed in the record, tears at the heart of our criminal justice system. It violates constitutional guarantees of Due Process and Equal Protection. Judge Boyle, who was the John Doe Judge, had every expectation that the documents Graveley put on the record were accurate and true. By submitting Exhibit 49 into the record of the John Doe Proceeding, I allege Graveley engaged in more egregious misconduct than the misconduct of simply providing Exhibit 49 to Mr. Bell.

Remedies/need for OLR to provide consideration to Appendix S:

As far as I can tell, absent any information from the OLR than will show otherwise, the OLR did not act nor consider any of the information contained in Appendix S. Therefore, this information should be deemed to be "new information" by the OLR. As such, my grievance is entitled to a new evaluation, as if it were a newly filed Grievance. The new information provided in the next section about information obtained pursuant to the two public records requests further justifies this demand.

Conclusion of this section:

This section provided information that supports my concerns that the OLR has not given any consideration to information I provided that shows that Graveley submitted the September 27, 2017 letter (Exhibit 49) into the record of a John Doe proceeding. I allege that this letter, which I allege to be a fraudulent and deceptive misrepresentation of the truth, influenced the Circuit Court judge in his decision to dismiss the John Doe Petition.

I outlined the many compelling reasons why I believe the OLR did not properly and adequately consider the information contained in my second addendum (Appendix S) to my Grievance. If the OLR did, in fact, not provide appropriate consideration to the information that Graveley submitted and cited his deceptive September 27, 2017 letter (Exhibit 49) into the record of a John Doe proceeding, the OLR must remedy this omission by starting over and moving the status of this Grievance back to the initial evaluation stage.

New information obtained via public records requests

Information about public records requests:

On April 16, 2021, Attorney Christa Westerberg filed two separate public records requests at the direction of Michael Bell. One request, Exhibit 203, was to the Wisconsin Department of Justice. The other, Exhibit 202, was to the Kenosha County District Attorney's Office.

The request to the Kenosha County District Attorney (Exhibit 202) sought the following:

Screenshot from Exhibit 202:

> This request seeks the following:
>
> - Records of communications between you or your office, and the Wisconsin Department of Criminal Justice State Crime Lab unit staff, including but not limited to Eva Marie Lewis King, regarding DNA.
>
> - Records the communications between you or your office, and the Wisconsin Department of Criminal Justice State Crime Lab unit staff, including but not limited to Eva Marie Lewis King, regarding Michael E. Bell.
>
> The date range for this request is from September 7, 2017 through October 27, 2017. It includes, but is not limited to, all telephone records and call logs of Kenosha County District Attorney Michael Graveley during the specified period.

The request to the Wisconsin Department of Justice (Exhibit 203) sought the following:

Screenshot from Exhibit 203:

> This request seeks the following:
>
> - Records of Kenosha County District Attorney Michael Graveley contacting the Wisconsin Department of Criminal Justice State Crime Lab unit staff, including but not limited to Eva Marie Lewis King, regarding DNA.
>
> - Records of Kenosha County District Attorney Michael Graveley contacting the Wisconsin Department of Criminal Justice State Crime Lab unit staff, including but not limited to Eva Marie Lewis King, regarding Michael E. Bell.
>
> The date range for this request is from September 7, 2017 through October 27, 2017. It includes, but is not limited to, all telephone records and call logs associated with Kenosha County District Attorney Michael Graveley contacting the Wisconsin Department of Justice Crime lab during the specified period.

Purpose of public records request/criticisms of OLR investigative indolence:

The obvious purpose of these two requests was to complete a basic investigatory step in determining the nature and context of any communications between Graveley and State Crime Lab DNA analysts related to the September 27, 2017 letter. (Exhibit 49)

As previously indicated, one of the parts of the September 27, 2017 letter (Exhibit 49) that is the subject of this Grievance is the following statement:

- "I [Graveley] again called the DNA analysts at the State Crime Lab to confirm my prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death."

I addressed my concerns about the veracity of this statement extensively in my February 28, 2021 Grievance (See pages 25-26, Appendix Q)

This screenshot of Footnote #33 on page 26 of the February 28, 2021 Grievance (Appendix Q) is a decent summary of my concerns:

[33] New information (documented January 30, 2021) will be presented later in this appendix related to Graveley's involvement in the homicide prosecution of Dalquavis Ward and the critical touch DNA evidence in this case that was discovered on a door knob by a Wisconsin State Crime Lab Analyst. The manner and approach of this crime lab analyst in discovering and collecting this important touch DNA evidence causes Beckman to seriously doubt that Graveley actually consulted with any crime lab employee who actually works with DNA analysis. Beckman can not envision any qualified crimel ab employee providing Graveley with information that would support his position on touch DNA, even if Graveley presented the "simply touch" "for an extremely short period of time" scenario. Beckman believes that this consultation simply did not occur as Graveley claims. That may explain why Graveley did not name the analysts with whom he claims to have consulted. If Graveley is being honest in his claim that he consulted with crime lab DNA analysts who concurred with him, crime lab administrators should be concerned. They should demand that Gravely disclose the names of these analysts so the work of these analysts can be reviewed to determine if it conforms to standard and acceptable practices."

In paragraph 7 of his April 29, 2021 response Graveley provided the identity of one of the State Crime Lab DNA Analysts he communicated with regarding the information in the September 27, 2017 letter.[86] He reported that this lone Analyst is Gretchen DeGroot. Graveley provides very limited information about his communications with DeGroot, including no confirmation whether DeGroot really did confirm ". . .[Graveley's] prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death."

[86] In the September 27, 2017 letter Graveley wrote the word "analysts", which implies that he communicated with more than one "analyst."

I expected that the OLR would also engage in this basic investigative step of seeking records to confirm or refute any claims that Graveley would make in his response to my Grievance. At this time it appears they did not. It also appears the OLR did not interview DNA Analyst Gretchen DeGroot, and ask her exactly what was the content of her communications with Graveley. This is especially important since Graveley enhanced the suspicions that he was deceptive in the September 27, 2017 letter by not addressing the matter with specificity in his response.

The public records law gives citizens a tool with limited power to investigate government corruption. I am attempting to utilize this tool to obtain evidence that will expose the truth about the interactions between Graveley and Crime Lab DNA analysts.

Earlier, in this response to Graveley's paragraph #7, (pages 32-42) I discussed both my actions and frustrations with the OLR and what appears to be their investigative indolence regarding my Grievance.

I wrote this on page 37 of this response:

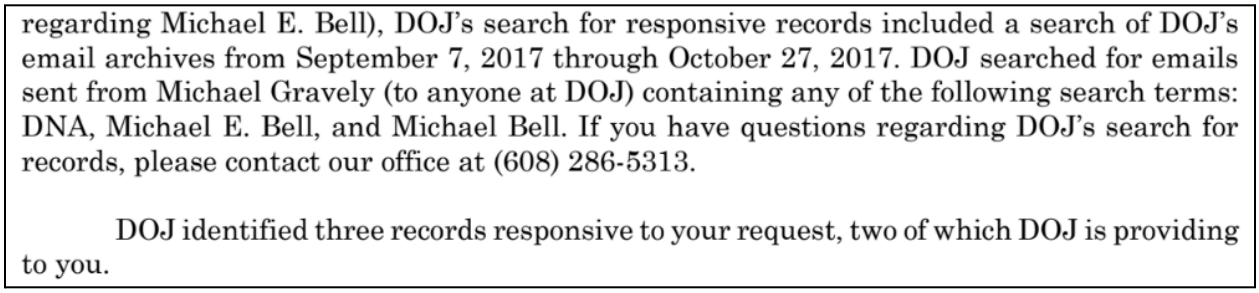
> Why didn't the OLR interview DNA analyst Gretchen DeGroot and ask her, "What did Graveley say to you and what did you say to him?" Does the OLR expect me to perform that basic investigative step? What if I did? Does anyone believe that I could actually get DeGroot on the phone? What would happen if I showed up at the door to the Crime Lab? Would they let me in? Does anyone really believe that DeGroot would talk to me even if I was able to get her on the phone or managed to manipulate myself into a face to face encounter with her? If I was her, I would not.
>
> Any investigatory actions I can responsibly, ethically, and effectively take must be within the confines of the law. Wisconsin's public records law does provide a limited avenue that can be used.

Information obtained from the Wisconsin Department of Justice:

On June 15, 2021, The Wisconsin Department of Justice complied with Attorney Westerberg's April 16, 2021 public records request. (Exhibit 203) The DOJ sent an email to Attorney Westerberg to comply. (Exhibit 225) Exhibit 225 had three attachments, Exhibits 224, 226, 227.

The compliance letter (Exhibit 224) contains the following language the explains the email archive search parameters used by the DOJ in their search for the requested records:

Screenshot of part of page 1 of Exhibit 224:



regarding Michael E. Bell), DOJ's search for responsive records included a search of DOJ's email archives from September 7, 2017 through October 27, 2017. DOJ searched for emails sent from Michael Gravely (to anyone at DOJ) containing any of the following search terms: DNA, Michael E. Bell, and Michael Bell. If you have questions regarding DOJ's search for records, please contact our office at (608) 286-5313.

DOJ identified three records responsive to your request, two of which DOJ is providing to you.

Based upon the search criteria, I believe the third record is Exhibit 49, page 4, the September 27, 2017 email that Graveley sent to the Wisconsin State Crime Lab DNA supervisor Eva Lewis on behalf of ADA Burgone regarding the Duke case.[87] The OLR could certainly confirm my belief by seeking this unprovided email from the DOJ.

As I expected, the two email records provided by the DOJ support my contention Graveley's statement, that follows, in the September 27, 2017 letter (Exhibit 49), is false:

- "I [Graveley] again called the DNA analysts at the State Crime Lab to confirm my prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death."

[87] I discussed this email and its relevance to this grievance in my response to paragraphs 16 through 18, pages 70 - 77 of this response.

This is a screenshot of the relevant part of the DOJ provided email. (Exhibit 225, page 2.)[88]

Gretchen, Did you find anything I can review? Thanks, Mike Graveley

Sorry Gretchen, Just found you sent this. Mike

From: DeGroot, Gretchen A. [mailto:degrootga@DOJ.STATE.WI.US]
Sent: Friday, September 08, 2017 11:40 AM
To: Graveley, Michael
Subject: DNA articles on Transfer

Mike,
I was unable to find any articles that dealt specifically with DNA transfer to a firearm after short term contact but I have included a couple of articles that deal with the transfer of DNA from a second person onto an item worn or used original by another person. I am also including a review article on DNA transfer. If you see anything in the references you would like me to try and obtain for you please let me know and I will do my best to get it for you.
Hope this is useful,
Gretchen

Gretchen A. DeGroot, M.S. / DNA Analysis Technical Unit Leader/ Wisconsin State Crime Laboratory Bureau
1578 S. 11 St, Milwaukee, WI 53204-2860/ Phone: 414-382-7500/ Fax: 414-382-7507/ or
4626 University Avenue, Madison, WI 53705-2174/ Phone: 608-266-2031/Fax: 608-267-1303

degrootga@doj.state.wi.us

As indicated, the DOJ compliance email (Exhibit 225) had three attachments. Two of the attachments were meta-data files, one for the email with the text, *"Gretchen, Did you find anything for me to review? Thanks, Mike Graveley"* (Attachment titled "untitled 1" Exhibit 226); the other for the email with the text *"Sorry Gretchen, Just found you sent this. Mike"* (Attachment titled "untitled 2" Exhibit 227)"

The meta-data for the email with the text, *"Gretchen, Did you find anything for me to review? Thanks, Mike Graveley"* (Attachment titled "untitled 1" Exhibit 226) indicates it was sent by Graveley on **September 12, 2017 at 13:35:56**. This can be seen in the following screenshot of the relevant part of this meta-data (Exhibit 226):

[88] The initial email in this chain was provided by Graveley in his April 29, 2021 response (Exhibit 195) as Attachment 8. (page 101, Exhibit 199.) I provide extensive discussion of this email in my response to paragraphs 7, pages 32-42 and this section starting on page 92.

```
From: "Graveley, Michael" <Michael.Graveley@da.wi.gov>
To: "DeGroot, Gretchen A." <degrootga@DOJ.STATE.WI.US>
Subject: Articles on touch DNA findings for firearms
Thread-Topic: Articles on touch DNA findings for firearms
Thread-Index: AdMry/wsilPsF9RKSiStYsUN3uOAlg==
Content-Class: urn:content-classes:message
Date: Tue, 12 Sep 2017 13:35:56 +0000
Message-ID: <444A4B232454EC42A8BC325967180F0E3C9A1ADE@EXMB5.danet.wi>
Content-Language: en-US
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
X-MS-Exchange-Organization-RecordReviewCfmType: 0
Content-Type: multipart/alternative;
        boundary="_000_444A4B232454EC42A8BC325967180F0E3C9A1ADEEXMB5danetwi_"
MIME-Version: 1.0

--_000_444A4B232454EC42A8BC325967180F0E3C9A1ADEEXMB5danetwi_
Content-Type: text/plain; charset="us-ascii"
Content-Transfer-Encoding: quoted-printable

Gretchen,  Did you find anything I can review?  Thanks,   Mike Graveley
```

The meta-data for the email with the text, *"Sorry Gretchen, Just found you sent this. Mike"* (Attachment titled "untitled 2" Exhibit 227) indicates it was sent by Graveley on **September 12, 2017 at 13:36:55**. This can be seen in the following screenshot of the relevant part of this meta-data (Exhibit 227):

```
From: "Graveley, Michael" <Michael.Graveley@da.wi.gov>
To: "DeGroot, Gretchen A." <degrootga@DOJ.STATE.WI.US>
Subject: RE: DNA articles on Transfer
Thread-Topic: DNA articles on Transfer
Thread-Index: AdMowSJ2Muzc1XpLSv6TH8LR2LfjfgDCwTOQ
Content-Class: urn:content-classes:message
Date: Tue, 12 Sep 2017 13:36:55 +0000
Message-ID: <444A4B232454EC42A8BC325967180F0E3C9A1AEC@EXMB5.danet.wi>
References: <18F62CBCF586174E90D184FFC168DDAB03CD9B2947C3@MBX.doj.state.wi.us>
In-Reply-To:
 <18F62CBCF586174E90D184FFC168DDAB03CD9B2947C3@MBX.doj.state.wi.us>
Content-Language: en-US
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
X-MS-Exchange-Organization-RecordReviewCfmType: 0
Content-Type: multipart/alternative;
        boundary="_000_444A4B232454EC42A8BC325967180F0E3C9A1AECEXMB5danetwi_"
MIME-Version: 1.0

--_000_444A4B232454EC42A8BC325967180F0E3C9A1AECEXMB5danetwi_
Content-Type: text/plain; charset="us-ascii"
Content-Transfer-Encoding: quoted-printable

Sorry Gretchen,  Just found you sent this.  Mike
```

Discussion:

This record indicates the extent of the written communications between Graveley and the DNA analysts. It should be noted that this written communications occurred with only one DNA analyst, not more than one DNA analyst, as Graveley claimed in the September 27, 2017 letter. (Exhibit 49) (Graveley uses the plural version of the word analyst in the September 27, 2017 letter. (Exhibit 49))

Additionally, the email record provided by the DOJ has no indication that DNA Analyst DeGroot, nor any other DNA analyst, *". . .confirm[ed] my [Graveley's] prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death."* as Graveley claimed in the September 27, 2017 letter. (Exhibit 49)[89]

I do not know exactly what communications Graveley was required to submit to the OLR. However, I find it curious that Graveley did not submit, to the OLR, the two follow-up emails he sent to DNA Analyst DeGroot. Admittedly, the two follow-up communications were very short. However, both are relevant to my grievance.

Graveley asks DeGroot, "Did you find anything for me to review?" That implies that Graveley was relying on DeGroot to provide to him the scientific literature on touch DNA that he cited in the September 27, 2017 letter (Exhibit 49). Remember in that letter Graveley wrote the following about his position on touch DNA and its relevance in the Bell case, "This is consistent with the literature on touch DNA."

As discussed in great detail in the section titled **"Discussion of journal articles Gretchen DeGroot emailed to Graveley as attachments and his response to studies cited in Grievance"**, pages 38-43 of this response, Graveley neither cited nor offered any academic studies that supports his statement that his position is "consistent with the literature on touch DNA."[90] This exposes one of several significant misrepresentations in the September 27, 2017 letter (Exhibit 49), which, as indicated in Addendum 2 of this Grievance,(Appendix S) was put into the record of a John Doe Petition and cited in this submission by Graveley.

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[89] As previously described in pages 32-37 of this response.

[90] In his response paragraphs 8, 9, 10, and 11, Graveley responds to only two of the eleven studies that I offered and cited in my February 28th Grievance. (pages 8 - 23, Appendix Q) In addition, in footnote #3 of his response, (see response to paragraph #11) Graveley responds to a sentence in one study that is citing two other studies that I wrote about in my initial Grievance.

Information obtained from the Kenosha County District Attorney's Office:

On Friday, June 17, 2021, Investigator Brian Stuht from the Kenosha County District Attorney's Office sent an email to Attorney Christa Westerberg. (Exhibit 228) Stuht advised that records to comply with Westerberg's April 16, 2021 public records request (Exhibit 202) would be mailed (U.S. Postal Service) to Westerberg on June 18, 2021.

On June 24, 2021, Mr. Bell emailed me the letter, dated June 17, 2021, that was sent to Attorney Westerberg. (Exhibit 229) This letter indicates that the responsive records, requested via the April 16, 2021 request (Exhibit 202), are on a disc that accompanied the letter. (Exhibit 229)

Mr. Bell arranged for me to have a copy of the digital files from this disc. I took possession of these digital files on June 28, 2021. I picked up a CD disc from Attorney Westerberg's Madison, Wisconsin Office. I will securely retain the disc so that it would be available if the need to examine the meta-data of the digital files becomes necessary. I made copies of the digital files on this disc and only worked with copies of the files. The original digital files were left intact and unaltered.

The disc contained eight digital files. One of which was a PDF file that was a copy of Exhibit 229, which is the June 17, 2021 compliance letter that Graveley sent to Attorney Westerberg.

The other seven digital files were formatted as MSG files. It was necessary for me to use "MailRaider Pro" software to convert the msg files to a PDF format so they could be presented in this response.

These seven digital files are now Exhibits 230, 231, 232, 233, 234, 235, and 236.

What follows is a description of these seven files:

Exhibit 230:

September 8, 2017 email from WI DOJ Crime Lab DNA Analyst Gretchen DeGroot to DA Graveley with 4 DNA transfer articles attached. This is the same email as was obtained from WI DOJ as Exhibit 225. This email was also provided to the OLR by Graveley in his April 29, 2021 response to this Grievance. (Exhibit 195)

Exhibit 231:

September 12, 2017 email from DA Graveley to WI DOJ Crime Lab DNA Analyst Gretchen DeGroot. This is the same email as was obtained from WI DOJ as Exhibit 225.

Exhibit 232:

September 12, 2017 Email from DA Graveley to WI DOJ Crime Lab DNA Analyst Gretchen DeGroot. This is the same email as was obtained from WI DOJ as Exhibit 225.

Exhibit 233:

October 13, 2017 email from WI DOJ Office Associate Carla Ranchau to DA Graveley and several others regarding professional qualifications of several State Crime Lab employees. **This email has no apparent relevance to the Grievance filed with the OLR.**[91]

Exhibit 234:

October 24, 2017, follow up email from WI DOJ Crime Lab Forensic Scientist Jessica Crawford to DA Graveley as a followup to Exhibit 233. **This email has no apparent relevance to the Grievance filed with the OLR.**

Exhibit 235:

September 27, 2017 email exchange between Kenosha County Assistant District Attorney Andrew Bergoyne, Michael Graveley, Kenosha PD Officer T. Thorne, and Wisconsin Crime Lab DNA Supervisor E. Louis. This is page 4 of Exhibit 49, which was included in the document set "01-15-2019 Part 2 of 4 Open Record Request 03-28-2019 1-211" from Exhibit 183.

Exhibit 236:

May 3, 2021 email from Kenosha DA Investigator Brian Stuht to Kenosha County employee Jordan Frey seeking phone records and Frey's May 4, 2021 response.[92]

[91] This email was not provided by the WI DOJ pursuant to the public records request that was filed with them. However, it does not matter since it is irrelevant to this Grievance.

[92] There may be a discrepancy between this communication and the communication that Investigator sent to Attorney Westerberg on May 7, 2021. (Exhibit 221) However, unless DA Graveley ends up reporting that he had telephone conversations with State Crime Lab DNA Analysts during which DNA Analyst(s) concurred with his position of touch DNA in the Bell case, then the need to obtain phone records does not exist. If it is required, the OLR investigators can take the lead and secure these records to verify any potentially reported telephone conversation.

Discussion:

This is yet another example of the absence of communications records that refute one of Graveley's deceptive claims in the September 27, 2017 letter. (Exhibit 49) Specifically, his claim in this letter that State Crime Lab DNA Analysts concurred with his position of touch DNA in the Bell case.

This absence of records obtained from the Kenosha County District Attorney via this public records (Exhibit 202) request is confirmed from two other sources of information. First, as described in the previous section, the records provided by the Wisconsin Department of Justice pursuant to a records request that mirrored the request sent to the Kenosha County District Attorney also produced no records that confirm Graveley's deceptive claim of State Crime Lab DNA analysts concurrence with his position on touch DNA in the Bell case.

Second, Graveley offered nor provided no records that support his claim of DNA Analyst concurrence in his April 29, 2021 response to the OLR (Exhibit 195) for this Grievance. Further, and more telling that Graveley was deceptive in this claim, Graveley did not confirm or stand by this claim anywhere in his response (Exhibit 195) that State Crime Lab Analysts concurred with him. Graveley does not address it at all.

Why is this significant? If his claim was true, he would certainly defend it. The truthfulness of the statement could be easily verified by interviewing whatever DNA analysts Graveley claims concurred with him and through relevant phone records. (see footnote 92 for additional information.) As previously indicated, I can not likely successfully interview these currently unidentified DNA analysts.

Did the OLR ask Graveley, specifically and directly, the following two questions in their request to Graveley to respond to my allegations?

- *Did you actually, as you claim in the September 27, 2017 letter (Exhibit 49), "again called the DNA analysts at the State Crime Lab to confirm my prior training and assumptions and was again told that there would be no expectation of DNA results under the facts and circumstances described in your son's death."?*

- *If the answer to the aforementioned question is yes, provide the name(s) of these analysts.*

If the goal of an ethics investigation into an attorney by a governmental regulatory agency is to actually determine the truth and to protect the public from unethical attorneys, then it is absolutely required that these two questions be asked and answered. If these two questions were not asked, it means only one of two things:

- The goal of the regulatory agency investigation is to protect the accused attorney and put his or her interests above that of the general public.

- The investigator and his or her supervisors are grossly incompetant.

I have an opinion about which one of the two it is, but I will not disclose it at this time.

The Supreme Court Rules would require Graveley to honestly answer these two questions if the OLR posed them. The OLR is not investigating a crime and Graveley has no Fifth Amendment privilege to refuse to answer these two questions.

If the OLR asked Graveley these two fundamental questions and Graveley did not answer them in his April 29, 2021 response to the OLR (Exhibit 195) the OLR needs to follow-up and press Graveley to respond to these questions.

On May 11, 2021, I sent an email (Exhibit 201) to OLR Investigator Jonathon Zeisser. As shown by this screenshot of part of this email, I asked Zeisser to provide me with the request for response that he sent to Graveley:

> I respectfully request that you provide me with a copy of whatever and all letter(s), email(s), or other correspondence you sent to Graveley that prompted his April 29, 2021 response to you. Please know that I believe I will not be able to properly respond to your denial unless I have these documents. During a telephone conversation we shared on April 12, 2021, you asked me several questions and told me that you were going to send a written request to DA Graveley asking him to respond to questions and to provide a written response to my allegations. This(ese) is/are the documents I am seeking. At the time of our conversation, I believe you were seeking this response from Graveley pursuant to your authority under Wisconsin Supreme Court Rule 22.03(2).

Two minutes later, Zeisser responded as follows: (Screenshot of part of Exhibit 201.)

> Mr. Beckman,
>
> The Director considers my letter to be work product and it is not provided.

The point is that I do not know, at this time, if Graveley was ever asked these questions by the OLR. I expect that at some point it will become known.

Remember, it matters because Graveley submitted this deceptive statement into the record of a John Doe Proceeding and cited it in his court ordered response. It is reasonable to assume his deceptive words and misrepresentations ultimately convinced the Judge to dismiss the petition. Such bad acts by a prosecutor can not be legitimized by regulatory indolence.

The OLR has an ethical duty to the citizens of this state to get this right. Should they not, citizens not only have the right, but the responsibility to make sure that the OLR complies with its mission to protect citizens from unethical lawyers. Yes, even if the unethical lawyer is an elected District Attorney with the sacred duty to protect the fundamental civil rights of all citizens, including those citizens who's loved ones are victims of a questionable homicide at the hands of the police.

Discussion of new information-Request for change of grievance status

Previously, I outlined the many compelling reasons why I believe the OLR did not properly and adequately consider the information contained in my second addendum (Appendix S) to my Grievance. (See pages 84 - 94 of this response for further details.) Based on these reasons, I proposed that the OLR must remedy this omission by starting over and moving the status of this Grievance back to the initial evaluation stage.

My call for the OLR to move the status of this Grievance back to that of newly filed is further legitimized by the information obtained in the public records requests from both the Wisconsin Department of Justice and the Kenosha County District Attorney. The information obtained via these two public records requests undermine Graveley claim, which he published and disseminated in the September 27, 2017 letter (Exhibit 49) that State Crime Lab DNA analysts concurred with his position on touch DNA in the Bell case.

I implore the OLR fulfil its mission and consider all the information that I have developed in support of my Grievance. As a private citizen, there are limits to the extent that I can conduct an investigation. Further, I should not bear this burden. No citizen should. As previously indicated, I am alleging that Graveley violated a Supreme Court "shall not" rule that is both non-discretionary and imperative. Graveley's intentional act resulted in significant harm, potentially irreversible harm, to the Bell's family's pursuit of justice in the death of their son at the hands of the Kenosha Police.

For the OLR to dismiss this grievance without a formal investigation would be yet another injustice placed upon a firm foundation of injustice that has been constructed by Kenosha law enforcement officials in their long standing effort to conceal the true circumstances of the death of Michael Bell. The OLR must perform its regulatory mission in the manner in which it proceeds with this grievance.

In the Author's Foreword of this response I wrote about the Bernard Madoff debacle that soiled the reputation of the Securities and Exchange Commission. I suggest that readers of this response go back and reread this section so they may gain the wisdom that history offers.

I implore the OLR to do what is required and not allow such a debacle to occur again at their hands.

Certification of Grievant

This response was drafted by the Grievant, Russell Beckman. Beckman believes, to the best of his knowledge and ability, that all information presented in this document is true or can be reasonably inferred.

This digital document was submitted, via email, to the Wisconsin Office of Lawyer Regulation on July 12, 2021 to the following email addresses:

olr.intake@wicourts.gov
jonathan.zeisser@wicourts.gov