

**SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR**

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September 9, 2008

Senator Richard Sears, Chair
Senate Judiciary Committee
115 State Street
Montpelier, VT 05633

Dear Senator Sears:

I have your letter of September 2, 2008 requesting further information related to the Michael Jacques case.

General Questions for Judges

Judge Walter M. Morris, Jr. will be appearing before your committee at 10:00 a.m. on Thursday, September 11, 2008 to answer the questions in your letter.

Questions for the Court Administrator

Judicial Training/Education: See Attachment #1. The attachment briefly describes the Vermont Judicial Education program generally and then references specific programs relating to sexual assault, child sexual abuse, treatment of offenders and victims, and considerations in sentencing sex offenders. When you review Attachment #1, you will note the following elements of the Vermont Judicial Education program that address the areas of interest about which you have inquired:

- Vermont Judicial College Programs
 - Sex Offenders: Risk Assessment and Treatment
 - Sentencing Sex Offenders
 - Evidenced-Based Sentencing
 - Child abuse registry and increased sex offender registry requirements
 - Stalking and sexual assault cases: legal issues
 - Sexual exploitation and issues concerning the DOC
 - Addison County sex offender polygraph project

- Other In-State Judicial Education Programs
 - Orientation and Mentoring of New Judges: sex offender issues
 - District Court Day and Family Court Day educational programs
 - Participation in statewide multidisciplinary conferences
- Tri State [VT, NH, ME] Judicial Education Programs
 - domestic violence and effects on children and families, including the issue of sexual abuse
 - sentencing of sex offenders
- National Judicial Education Programs
 - Evidence, Criminal Law, and Sentencing
 - Enhancing Judicial Skills in Domestic Violence Cases
 - Continuing Judicial Skills in Domestic Violence Cases
 - Innovative Judicial and Probation Responses to Domestic Violence
 - Addressing Domestic Violence and Child Custody
 - Dynamics of domestic violence [the victim]
 - Effects of domestic violence on children
 - Judicial symposium on child sexual abuse
 - Victim realities
 - Child abuse and neglect – case law update
 - Community notification and sex offenders
 - Do high-risk sex offenders belong in the community?
 - Teen dating violence
 - Dysfunctional violent families
 - The victim in juvenile court
 - Medical aspects of child abuse and neglect
 - Psychological perspective on the child victims
 - The adjudicatory process in child abuse and neglect cases
 - Sexually aggressive and reactive children
- Grant-Funded Programs
 - National Council of Juvenile and Family Court Judges Conferences
 - The Child Abuse and Neglect Institute: The Role of the Judge
 - The Role of Judges in Managing Juvenile Sex Offense Cases: Keys to Informed Decision-Making
- Local Bench-Bar Meetings
 - Medical aspects of child abuse cases
 - Treatment programs offered to offenders, including the IDAP program for domestic abusers

Rotation of Judges: The Court has over the years considered the advantages and disadvantages of rotating the assignment of judges.

For some background, when I joined the Judicial Branch in 1977, the superior judges were assigned to superior courts in each county according to a true “wheel:” every six months, judges would move throughout the state from county to county according to a fixed schedule. There was no flexibility.

Prior to 1977, district court judges were assigned solely to the district court(s) to which they were appointed. In 1976-1977, The Supreme Court reviewed the advantages and disadvantages of this “no rotation policy” and decided that it was important to assign judges outside of the district. They believed that too many problems were surfacing because the same attorneys were appearing before the same judge year after year; they also believed that judges needed to rotate in order to develop and spread best court management practices throughout the system.

Over the years, as a result of the continuing analysis of the advantages and disadvantages of the rotation policy, the practice has evolved into longer assignments. At this time, most assignments are for a full year and it is no longer unusual for assignments to a particular court to extend into a second and even a third year.

The policy on the rotation of judges is established by the legislature. See 4 V.S.A. § 73, which sets forth requirements for the assignment of judges to the superior courts and 4 V.S.A. § 444, which sets forth requirements for the assignment of judges to the district courts. Specifically, 4 V.S.A. § 444(a) states:

“... the administrative judge shall assign the district judges among the territorial units and shall establish a rotation schedule, both within and outside the unit to which the judges are regularly assigned.”

Requests for Discharge from Probation: Jacques

- March 7, 2003: A request for discharge from probation was filed by the defendant. The request was denied on April 4, 2003 by the Hon. Michael Pratt (Hearing Officer assigned to the Orange District Court for that period of time.)
- August 23, 2004: A request for discharge from probation was filed by the Department of Corrections (Richard Kearney, Probation Officer and Richard Rideout, Casework Supervisor). The request for immediate discharge was denied on November 4, 2004 by Judge Amy M. Davenport; in her decision, Judge

- Davenport ordered: “probation in this case should continue until July 1, 2006, at which time, assuming there are not probation violations, it should terminate.”
- November 21, 2006: A request for discharge from probation was filed by the Department of Corrections (Richard Kearney and Rick Rideout, Supervisor). No objection to the request was filed. The request was granted by Judge Patricia Zimmerman on December 5, 2006.

For Judge Cook

Judge Alan Cook sentenced Mr. Jacques on July 12, 1993. Judge Cook has no independent recollection of this particular hearing of more than 15 years ago. Judge Cook suggested that I provide the committee with a copy of any plea agreement that may have been filed and that he would have reviewed prior to sentencing.

A “Notice of Plea Agreement,” signed by Attorney for the State James McKnight, Attorney for the Defendant Kevin Griffin and Defendant Michael Jacques was filed with the court on July 12, 1993. *See Attachment #2.*

Judge Cook also notes that the filing was “a binding plea agreement,” meaning that he could either accept the agreement as is or reject it and set the case for trial; he could not issue a modified sentence.

To answer your two questions:

- A pre-sentence investigation was not ordered because, as stated in the agreement: “the parties agree to waive the p.s.i. (Pre-sentence investigation).” Judge Cook tells me that waiver of the PSI in the plea agreement was common in 1993.
- Judge Cook does not recall the rationale for the split sentence recommended in the plea agreement. Judge Cook does state that it is and was common for the State to consider the strength of the case and the willingness of the victim to testify when deciding what sentence to recommend in the plea agreement.

For Retired Judge Shireen Fisher

Judge Shireen Fisher retired from the Vermont Judiciary years ago and has not been assigned to sit in Vermont courts for a number of years. She and her family reside in London. Several years ago, Judge Fisher was appointed as an International Judge to

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the War Crimes Chamber in Bosnia and Herzegovina. I do not know whether she continues to serve in that capacity. I have not attempted to contact her.

For Judge Davenport

See the *Attachment 3*, the September 9, 2008 memorandum from Judge Davenport answering your questions of her.

Very truly yours,

Lee Suskin
Court Administrator

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attachments